TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 93

NEW YORK LIFE INSURANCE COMPANY, PETITIONER,

vs.

Frank Collis Bowers, Executor of
FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED APRIL 26, 1930

CERTIORARI GRANTED JUNE 2, 1930

No. 160

Frank Collis Bowers, Executor of
FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF THE STATE OF NEW YORK, PETITIONER,

vs.

NEW YORK LIFE INSURANCE COMPANY

PETITION FOR CERTIORARI FILED MAY 26, 1930

CERTIORARI GRANTED JUNE 2, 1930

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

(34,982, 35,080)

(34,982, 35,080)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 93

NEW YORK LIFE INSURANCE COMPANY, PETITIONER,

vs.

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF THE STATE OF NEW YORK

No. 160

FRANK K. BOWERS, COLLECTOR OF INTERNAL REVENUE FOR THE SECOND DISTRICT OF THE STATE OF NEW YORK, PETITIONER,

vs.

NEW YORK LIFE INSURANCE COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in United States circuit court of appeals, second circuit	1	1
Statement on appeal	1	1
Record from district court of the United States, Southern New York	2	1
Complaint	2	1
Answer	29	18
Opinion, Mack, J.	43	27
Decision and order for judgment	52	33

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 17, 1930

	Original	Print
Judgment	56	35
Stipulation for trial upon agreed statement of facts	58	36
Bill of exceptions	59	36
Agreed statement of facts	60	37
Exhibit A—Extract from minutes of meeting of board of directors, January 14, 1918.	97	61
B—Extract from minutes of meeting of board of directors, February 13, 1919.	102	64
C—Extract from minutes of meeting of board of directors, February 11, 1920.	108	68
D—Extract from minutes of meeting of board of directors, February 9, 1921.	114	72
E—Annual statement, 1916	120	77
F—Annual statement, 1917	124	95
G—Annual statement, 1918	128	115
H—Annual statement, 1919	132	134
I —Annual statement, 1920	136	154
Stipulation and order settling bill of exceptions	140	174
Petition for appeal	141	174
Notice of appeal	142	175
Assignment of errors	144	175
Order allowing appeal	149	178
Citation and service (omitted in printing)	150	
Stipulation re transcript	152	179
Clerk's certificate (omitted in printing)	153	
Statement re cross-appeal	154	180
Petition and order allowing appeal	155	180
Assignment of errors	157	181
Order as to bill of exceptions	159	182
Order re printing record on cross-appeal	160	183
Citation (omitted in printing)	162	
Stipulation re transcript	163	183
Clerk's certificate (omitted in printing)	164	
Opinion, Hand, J	165	184
Judgment	177	192
Petition for rehearing (omitted in printing)	179	
Order denying rehearing	186	192
Clerk's certificate (omitted in printing)	188	
Orders allowing certiorari	190	193

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

NEW YORK LIFE INSURANCE COMPANY, Plaintiff-Appellant,

against

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York, Defendant-Appellee

STATEMENT

This suit was commenced April 28, 1923. The names of the original parties were New York Life Insurance Company, plaintiff, and Frank K. Bowers, Collector of Internal Revenue for the Second District of the State of New York, defendant, and no change has taken place in the parties. The plaintiff's complaint was filed April 28, 1923, and the defendant's answer was filed January 14, 1924. The defendant was not arrested, no bail was taken nor property attached nor arrested. Trial was had June 2, 1928, before the Honorable Julian W. Mack, Circuit Judge. No question was referred to a Commissioner, Master or Referee. The Court decided the case May 28, 1929, and final judgment was entered June 27, 1929, and the appeal was taken June 27, 1929.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN NEW YORK

L. 31-259

NEW YORK LIFE INSURANCE COMPANY, Plaintiff,

against

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York, Defendant

COMPLAINT

Now comes New York Life Insurance Company, plaintiff, and complains of Frank K. Bowers, Collector of Internal

Revenue for the Second Internal Revenue District of the State of New York, defendant, and alleges upon information and belief that:

I. This case arises under a law of the United States providing for internal revenue, to wit, under the Revenue Act of 1918, entitled "An Act to Provide Revenue and for other Purposes", approved February 24, 1919.

II. Said plaintiff now is and ever since the year 1843 has been a corporation duly organized and existing under and by virtue of the laws of the State of New York for the pur- [fol. 3] pose and engaged in the business of making insurance upon the lives of persons and all and every insurance appertaining to life, having its principal office and place of business at No. 346 Broadway, in the City of New York, in the State of New York, in the Second Internal Revenue District of said State. The defendant, Frank K. Bowers, was, during all the times hereinafter mentioned, the duly appointed, qualified and acting Collector of Internal Revenue for said Second Internal Revenue District of the State of New York.

III. The plaintiff duly made and filed with the Collector of Internal Revenue for said Second Internal Revenue District of the State of New York, on the form furnished it by the Treasury Department for that purpose, a full, complete and true return under oath of its president and treasurer of all the facts required by Section 1000 of said Revenue Act of 1918, as well as all the facts called for by said form, therein and thereby showing, and the fact was and is, that said plaintiff had no capital stock nor surplus nor contingent reserves maintained for the general use of its business, nor any reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act, and that said plaintiff was not liable for the payment of any sum as a tax or otherwise under the provisions of Section 1000 of said Revenue Act either for the year ending June 30th, 1919, or for the year ending June 30th, 1920, or for the year ending June 30th, 1921, or for the year ending June 30th, 1922, or for any one of said years or for any other time, or otherwise.

[fol. 4] IV. The plaintiff made and filed its said several returns in good faith and in the honest belief that the same

contained a full, complete and true statement and return of the capital stock of said plaintiff, and of the surplus or contingent reserves maintained for the general use of its business, and of all reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, and of all the facts required by Section 1000 of said Revenue Act or called for by said form, all as required or authorized by law and the regulations of the Treasury Department. No part nor item of said several returns, or of either one of them, was willfully or intentionally false or fraudulent, nor did they or either one of them contain any willful or intentional understatement or undervaluation.

V. Said Collector duly received said several returns and forthwith transmitted the same to the Commissioner of Internal Revenue who thereupon duly received and filed them and each of them in the Treasury Department.

VI. Thereafter, and in, to wit, the year 1922, said Commissioner of Internal Revenue undertook to audit the plaintiff's accounts for said several years with respect of said Capital Stock Tax, and he there and then and in, to wit, the month of June, 1922, undertook to, and did, amend said plaintiff's said several returns, and thereby erroneously made the plaintiff appear to be liable for a Capital Stock Tax for each of said several years; and thereupon [fol. 5] said Commissioner thereafter assessed against said plaintiff a Capital Stock Tax for the year ending June 30th, 1919, in the sum of $124,500, and for the year ending June 30th, 1920, in the sum of $117,019, and for the year ending June 30th, 1921, in the sum of $108,275, and for the year ending June 30th, 1922, in the sum of $94,134; and said defendant as the Collector of said District duly served upon said plaintiff notice of each of said several assessments and demanded payment thereof, and threatened said plaintiff to impose upon it all the penalties prescribed by law and to seize and sell the plaintiff's property, if said plaintiff failed to pay said several Capital Stock Taxes and each of them on or before ten days after the date of said notice. Thereupon said plaintiff, compelled thereto by said notice and demand and by said threats of said defendant, and on,

to wit, the 4th day of November, 1922, paid said defendant as such Collector said sum of $124,500 for said period ending June 30th, 1919, and said sum of $117,019 for said period ending June 30th, 1920, and said sum of $108,275 for said period ending June 30th, 1921, and said sum of $94,134 for said period ending June 30th, 1922, but made said payments and each of them and every part and item thereof involuntarily and under a specific protest in writing, therein setting forth in detail the basis of and reasons for such protest, from the time when such taxes were paid, and there and then duly demanded refund and repayment to it of said several sums and of each and every part and item thereof, and gave due notice that unless said defendant [fol. 6] complied with said plaintiff's said demand, said plaintiff would resort to every recourse provided by law for the recovery of the same. But said defendant there and then and at all times ignored said protest and failed and refused to comply with said demand, but received and retained said several sums so paid and every part thereof. Said several Capital Stock Taxes and each and every one of them, and each and every part and item thereof, were erroneously, illegally, unjustly, wrongfully and excessively assessed and collected.

VII. Thereafter and on, to wit, the 23rd day of November, 1922, said plaintiff duly made and filed its appeal to the Commissioner of Internal Revenue according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof, and there and then duly made and filed its claim for refund of said Capital Stock Taxes and of each of them and of every part and item thereof; but said Commissioner of Internal Revenue on, to wit, the 31st day of March, 1923, decided said several appeals against the plaintiff and denied said claims for refund and each of them and every part thereof.

And thereupon said plaintiff says for its

First Cause of Action

For the Recovery of the Capital Stock Tax Paid for the Period Ending June 30th, 1919

VIII. Said plaintiff incorporates herein and makes a part hereof each and all the facts stated and allegations made

[fol. 7] in the several foregoing paragraphs hereof which are numbered respectively I, II, III, IV, V, VI and VII as fully and with the same force and effect as if they were each herein written at length.

IX. Said Capital Stock Tax for the period ending June 30th, 1919, was illegally assessed and wrongfully collected for that:

(a) Said Capital Stock Tax is a direct tax levied on specific property because of the ownership thereof on an assessed valuation to be placed thereon, and therefore is void because, being a direct tax, it is not apportioned among the several states according to numbers as required by the fourth clause of Section 9 of Article I of the Constitution of the United States.

(b) Said plaintiff is a mutual life insurance corporation engaged in the business of insuring lives on the purely mutual, level-premium plan. It has not now and never has had any capital stock, nor shares of capital stock, nor stockholders.

(c) Said plaintiff did not at the end of the calendar year 1917, which was the close of the accounting period, used by it for the purpose of making up its income tax return preceding the first day of July, 1918, and the date used by said Commissioner in making said valuation and assessment, nor at any other time during the year ending June 30th, 1918, have any surplus or contingent reserves maintained for the [fol. 8] general use of its business or otherwise, nor did it then have any reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918.

(d) Said Commissioner assessed said Capital Stock Tax for the period ending June 30th, 1919, by deducting from the market value as of December 31, 1917, of said plaintiff's total admitted assets, which said market value was the sum of $884,637,709.01, the amount of its Legal Reserves, which was $734,510,999.13, plus an item allowed as debt liabilities in the sum of $25,621,336.39, plus an exemption of $5,000, making a total deduction of $760,137,335.52, and leaving a difference of $124,500,373.49, upon which last aforesaid sum said Commissioner levied, assessed and collected

said tax of $124,500 for said period ending June 30th, 1919. But in addition to said deductions, said Commissioner should have deducted the following three items which were also each debt liabilities and which he failed and refused to deduct, to wit:

Deposits required by contract to be held for apportionment among and payment to deferred dividend policyholders	$107,041,778.00
Dividends declared on deferred dividend policies and payable absolutely	14,123,549.64
Dividends declared on annual dividend policies and payable absolutely	12,437,514.00

[fol. 9] (e) It is the essence of mutual life insurance on the level premium plan that each policyholder is entitled to his insurance at cost. Each insured, however, pays yearly in advance an estimated sum as premium and at the end of each calendar year the corporation takes an account of its affairs and thereby ascertains what was the actual cost for the year to each insured, and how much each insured over-paid for the year. The corporation then accounts to each insured for such ascertained over-payment and returns it to him at the time and in the manner agreed to in his policy contract. The plaintiff has always transacted its said business in this way.

(f) The plaintiff's outstanding policy contracts provided for returning to its policyholders this annually ascertained over-payment either as a deferred dividend or as an annual dividend. A representative deferred dividend contract provided for returning these annually ascertained over-payments substantially as follows:

"This Policy is issued on the Nonforfeiting Free Tontine Policy Plan, the particulars of which are as follows:

"That the Tontine Period for this Policy shall be completed on the — day of —— in the year ——.

"That no dividend of surplus shall be allowed or paid upon this Policy, unless the insured shall survive until completion of its Tontine Period, and unless this Policy shall then be in force.

[fol. 10] "That surplus of profits derived from such Policies on the Nonforfeiting Free Tontine Policy Plan as shall

not be in force at the date of the completion of their respective Tontine Periods, shall be apportioned among such Policies as shall complete their Tontine Periods."

The foregoing is a representative form in respect of dividends of the plaintiff's said outstanding deferred dividend contracts and in the blanks therein was inserted in each contract the date of the completion of the tontine or deferred dividend period which was the anniversary of the insurance either five, ten, fifteen or twenty years after the commencement of the contract, as agreed upon in each policy.

The plaintiff invested and accumulated at interest the annually ascertained over-payments of premiums made on its said deferred dividend contracts, and maintained and held the same as a deposit awaiting apportionment among and payment to said policyholders, and as so invested, maintained and held, the amount thereof formed at all times a part of the plaintiff's said admitted assets, and for the reasons aforesaid the amount thereof formed also at all times a part of the plaintiff's liabilities and the plaintiff carried it as a liability on its books. Out of said over-payments so maintained and held, the plaintiff, at the commencement of each year, appropriated a sum equal to the equitable share therein of all the deferred dividend policyholders whose policies provided for a dividend that year, and duly apportioned the sum so appropriated among and [fol. 11] paid it as a dividend to said policy holders in accordance with the terms of their several contracts.

A representative annual dividend policy provided for returning to the policyholders these annually ascertained over-payments substantially as follows:

"The proportion of divisible surplus accruing upon this Policy shall be ascertained and distributed annually and will not be conditioned upon the payment of the next premium. At the option of the Insured such dividend shall each year, on the anniversary of the Policy, be either

"(a) Paid in cash; or

"(b) Applied toward the payment of any premium or premiums; or

"(c) Applied to the purchase of a participating Paid-Up addition to the sum insured; or

"(d) Left to accumulate to the credit of the Policy at such rate of interest as the Company may declare on such funds."

The over-payments of premiums on the plaintiff's annual dividend policies formed a part of its said admitted assets, and also for the reasons aforesaid formed a part of its liabilities. As soon as the plaintiff ascertained at the end of each year the amount its annual dividend policyholders [fol. 12] over-paid it that year, the plaintiff duly apportioned said amount among and paid it as a dividend to said policyholders on the next anniversary of their insurance and in accordance with the terms of their several contracts.

(g) At the end of the calendar year 1917, the plaintiff maintained and held deposits in said aggregate sum of $107,041,778 which were derived as aforesaid from said annually ascertained and accumulated over-payments of premiums made by its said deferred dividend policyholders, and which its said policy contracts required it to maintain and hold for apportionment among and payment to its said policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax. No part of said sum of $107,041,778 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(h) At the end of the calendar year 1917, the plaintiff maintained and held further deposits in said aggregate sum of $14,123,549,64 which were also derived as aforesaid from said annually ascertained and accumulated over-payments of premiums made by said deferred dividend policyholders, and which its said policy contracts required it to [fol. 13] maintain and hold for apportionment among and payment to its said policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax, and which said sum the plaintiff duly apportioned

among and declared as a dividend to be paid, and which it did duly pay as a dividend, to its said deferred dividend policyholders whose several policies completed their tontine or dividend periods within the calendar year 1918. No part of said sum of $14,123,549.64 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(i) At the end of said calendar year 1917, the plaintiff maintained and held further deposits in said aggregate sum of $12,437,514 which were derived as aforesaid from the over-payments of premiums made by the plaintiff's annual dividend policyholders, and which its said policy contracts required it to apportion among and pay to its said annual dividend policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax, and which said sum the plantiff duly apportioned among and declared as a dividend to be paid to, and which it did duly pay as a dividend to, its said annual dividend [fol. 14] policyholders on the anniversaries of their insurance during the calendar year 1918. No part of said sum of $12,437,514 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

Wherefore plaintiff prays judgment on this its First Cause of Action for the sum of $124,500 with interest and costs.

Second Cause of Action

For the Recovery of the Capital Stock Tax Paid for the Period Ending June 30th, 1920

X. The plaintiff incorporates herein and makes a part hereof each and all the facts stated and allegations made

in the several foregoing paragraphs hereof which are numbered respectively I, II, III, IV, V, VI and VII, and the several foregoing sub-paragraphs of that paragraph which is numbered IX, which said sub-paragraphs are lettered respectively (a), (b), (e) and (f) as fully and with the same force and effect as if they were each herein written at length.

XI. Said Capital Stock Tax for the period ending June [fol. 15] 30th, 1920, was illegally assessed and wrongfully collected for the several reasons aforesaid and also for that:

(a) Said plaintiff did not at the end of the calendar year 1918, which was the close of the accounting period used by it for the purpose of making up its income tax return preceding the first day of July, 1919, and the date used by said Commissioner in making said valuation and assessment, nor at any other time during the year ending June 30th, 1919, have any surplus or contingent reserves maintained for the general use of its business or otherwise, nor did it then have any reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918.

(b) Said Commissioner assessed said Capital Stock Tax for the period ending June 30th, 1920, by deducting from the market value as of December 31st, 1918, of said plaintiff's total admitted assets, which said market value was the sum of $939,070,667.18, the amount of its Legal Reserves, which was $762,930,020.45, plus an item allowed as debt liabilities in the sum of $59,116,393.85 plus an exemption of $5,000, making a total deduction of $882,051,414.30 and leaving a difference of $117,019,252.88, upon which last aforesaid sum said Commissioner levied assessed and collected said tax of $117,019 for said period ending June 30th, 1920. But in addition to said deductions, said Commissioner should have deducted the following three items which were also each debt liabilities, but which he failed and refused to deduct, to wit:

[fol. 16] Deposits required by contract to be held for apportionment among and payment to deferred dividend policyholders. $100,893,328.00

Dividends declared on deferred dividend policies and payable absolutely	19,000,738.13
Dividends declared on annual dividend policies and payable absolutely	13,636,876.00

(c) At the end of the calendar year 1918, the plaintiff maintained and held deposits in said aggregate sum of $100,893,328 which were derived as aforesaid from said annually ascertained and accumulated over-payments of premiums made by its said deferred dividend policyholders, and which its said policy contracts required it to maintain and hold for apportionment among and payment to its said policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax. No part of said sum of $100,893,328 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(d) At the end of the calendar year 1918, the plaintiff [fol. 17] maintained and held further deposits in said aggregate sum of $19,000,738.13, which were also derived as aforesaid from said annually ascertained and accumulated over-payments of premiums made by said deferred dividend policyholders, and which its said policy contracts required it to maintain and hold for apportionment among and payment to its said policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax, and which said sum the plaintiff duly apportioned among and declared as a dividend to be paid, and which it did duly pay as a dividend to its said deferred dividend policyholders whose several policies completed their tontine or dividend periods within the calendar year 1919. No part of said sum of $19,000,738.13 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included

in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(e) At the end of said calendar year 1918, the plaintiff maintained and held further deposits in said aggregate sum of $13,636,876, which were derived as aforesaid from the over-payments of premiums made by the plaintiff's annual dividend policyholders, and which its said policy contracts required it to apportion among and pay to its [fol. 18] said annual dividend policyholders, and which, therefore, should not hae been included, but which said Commissioner did wrongfully and illegally include, in computing said tax, and which said sum the plaintiff duly apportioned among and declared as a dividend to be paid to, and which it did duly pay as a dividend to, its said annual dividend policyholders on the anniversaries of their insurance during the calendar year 1919. No part of said sum of $13,636,876 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purposes of making its income tax return, or otherwise.

Wherefore plaintiff prays judgment on this its Second Cause of Action for the sum of $117,019 with interest and costs.

Third Cause of Action

For the Recovery of the Capital Stock Tax Paid for the Period Ending June 30th, 1921

XII. Said plaintiff incorporates herein and makes a part hereof each and all the facts stated and allegations made in the several foregoing paragraphs hereof, which are numbered respectively I, II, III, IV, V, VI and VII, and in the several sub-paragraphs of that paragraph which is [fol. 19] numbered IX and which said sub-paragraphs are lettered respectively (a), (b), (e) and (f) as fully and with

the same force and effect as if they were each herein written at length.

XIII. Said Capital Stock Tax for the period ending June 30th, 1921, was illegally assessed and wrongfully collected for the several reasons aforesaid, and also for that:

(a) Said plaintiff was taxed, and duly paid the tax, for the calendar year 1921 under and pursuant to Title II, Sections 242 and 245, inclusive, of the Revenue Act of 1921, which said Title II took effect as of January 1, 1921, and which expressly provides that the taxes imposed upon life insurance by said Sections of said Title of said Revenue Act of 1921 shall be in lieu of the taxes imposed by said Section 1000 for said calendar year 1921 and thereafter.

(b) Said plaintiff did not at the end of the calendar year 1919, which was the close of the accounting period used by it for the purpose of making up its income tax return preceding the first day of July, 1920, and the date used by said Commissioner in making said valuation and assessment, nor at any other time during the year ending June 30th, 1920, have any surplus or contingent reserves maintained for the general use of its business, or otherwise, nor did it then have any reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918.

[fol. 20] (c) Said Commissioner assessed said Capital Stock Tax for the period ending June 30th, 1921, by deducting from the market value as of December 31st, 1919, of said plaintiff's total admitted assets, which said market value was the sum of $904,381,280.97, the amount of its Legal Reserves, which was $763,528,231.62, plus an item allowed as debt liabilities in the sum of $32,572,180.96, plus an exemption of $5,000, making a total deduction of $796,105,412.58 and leaving a difference of $108,275,868.39 upon which last aforesaid sum said Commissioner levied, assessed and collected said tax of $108,275 for said period ending June 30th, 1921. But in addition to said deductions, said Commissioner should have deducted the following three items which were also each debt liabilities, but which he failed and refused to deduct, to wit:

Deposits required by contract to be held for apportionment among and payment to deferred dividend policyholders	$88,157,964.00
Dividends declared on deferred dividend policies and payable absolutely	18,194,897.56
Dividends declared on annual dividend policies and payable absolutely	13,850,878.00

(d) At the end of the calendar year 1919, the plaintiff maintained and held deposits in said aggregate sum of $88,157,964, which were derived as aforesaid from said [fol. 21] annually ascertained and accumulated over-payments of premiums made by its said deferred dividend policyholders, and which said policy contracts required it to maintain and hold for apportionment among and payment to its said policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax. No part of said sum of $88,157,964 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(e) At the end of the calendar year 1919, the plaintiff maintained and held further deposits in said aggregate sum of $18,194,897.56, which were also derived as aforesaid from said annually ascertained and accumulated over-payments of premiums made by said deferred dividend policyholders, and which its said policy contracts required it to maintain and hold for apportionment among and payment to its said policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax, and which said sum the plaintiff duly apportioned among and declared as a dividend to be paid, and which it did duly pay as a dividend, to its said deferred dividend policy-[fol. 22] holders whose several policies completed their tontine or dividend period within the calendar year 1920. No part of said sum of $18,194,897.56 consisted of surplus

or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(f) At the end of said calendar year 1919, the plaintiff maintained and held further deposits in said aggregate sum of $13,850,878, which were derived as aforesaid from said annually ascertained over-payments of premiums made by the plaintiff's said annual dividend policyholders, and which its said policy contracts required it to apportion among and pay to its said annual dividend policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax, and which said sum the plaintiff duly apportioned among and declared as a dividend to be paid to, and which it did duly pay as a dividend to, its said annual dividend policyholders on the anniversaries of their insurance during the calendar year 1920. No part of said sum of $13,850,878 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of [fol. 23] 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

Wherefore plaintiff prays judgment on this its Third Cause of Action for the sum of $108,275 with interest and costs.

Fourth Cause of Action

For the Recovery of the Capital Stock Tax Paid for the Period Ending June 30th, 1922

XIV. The plaintiff incorporates herein and makes a part hereof each and all the facts stated and allegation made in the several foregoing paragraphs hereof which are numbered respectively I, II, III, IV, V, VI and VII, and in the

several foregoing sub-paragraphs of that paragraph which is numbered IX and which said sub-paragraphs are lettered respectively (a), (b), (e) and (f) and also that sub-paragraph which is lettered (a) of the foregoing paragraph which is numbered XIII as fully and with the same force and effect as if they were each herein written at length.

XV. Said Capital Stock Tax for the period ending June 30th, 1922, was illegally assessed and wrongfully collected for the several reasons aforesaid, and also for that:

(a) Said plaintiff did not at the end of the calendar year 1920, which was the close of the accounting period used by [fol. 24] it for the purpose of making up its income tax return preceding the first day of July, 1921, and the date used by said Commissioner in making said valuation and assessment, nor at any other time during the year ending June 30th, 1921, have any surplus or contingent reserves maintained for the general use of its business or otherwise, nor did it then have any reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918.

(b) Said Commissioner assessed said Capital Stock Tax for the period ending June 30th, 1922, by deducting from the market value as of December 31st, 1920, of said plaintiff's total admitted assets, which said market value was the sum of $897,077,860.91, the amount of its Legal Reserves, which was $765,780,772.59, plus an item allowed as debt liabilities in the sum of $37,157,929.77, plus an exemption of $5,000, making a total deduction of $802,943,702.36 and leaving a difference of $94,134,158.55 upon which last aforesaid sum said Commissioner levied, assessed and collected said tax of $94,134 for said period ending June 30th, 1922. But in addition to said deductions said Commissioner should also have deducted the following three items which were also each debt liabilities but which he failed and refused to deduct, to wit:

Deposits required by contract to be held for apportionment among and payment to deferred dividend policyholders	$76,176,646.00
[fol. 25] Dividends declared on deferred dividend policies and payable absolutely	21,015,315.87
Dividends declared on annual dividend policies and payable absolutely	16,431,339.00

(c) At the end of the calendar year 1920, the plaintiff maintained and held deposits in said aggregate sum of $76,176,646, which were derived as aforesaid from said annually ascertained and accumulated over-payments of premiums made by its said deferred dividend policyholders, and which said policy contracts required it to maintain and hold for apportionment among and payment to its said policyholders, and which, therefore, should not have been included, but which said Commisisoner did wrongfully and illegally include, in computing said tax. No part of said sum of $76,176,646 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(d) At the end of the calender year 1920, the plaintiff maintained and held further deposits in said aggregate sum of $21,015,315.87 which were also derived as aforesaid from said annually ascertained and accumulated over-payments of premiums made by said deferred dividend policy holders, [fol. 26] and which its said policy contracts required it to maintain and hold for apportionment among and payment to its said policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax, and which said sum the plaintiff duly apportioned among and declared as a dividend to be paid, and which it did duly pay as a dividend, to its said deferred dividend policyholders whose several policies completed their tontine or dividend periods within the calendar year 1921. No part of said sum of $21,015,315.87 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(e) At the end of the calendar year 1920, the plaintiff maintained and held further deposits in said aggregate sum of $16,431,339, which were derived as aforesaid from said annually ascertained over-payments of premiums made by the plaintiff's annual dividend policyholders and which its said policy contracts required it to apportion among and pay to its said annual dividend policyholders, and which, therefore, should not have been included, but which said Commissioner did wrongfully and illegally include, in computing said tax, and which said sum the plaintiff duly [fol. 27] apportioned among and declared as a dividend to be paid to, and which it did duly pay as a dividend to, its said annual dividend policyholders on the anniversaries of their insurance during the calendar year 1921. No part of said sum of $16,431,339 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, nor did any part thereof consist of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

Wherefore plaintiff prays judgment on this its Fourth Cause of Action for the sum of $94,134 with interest and cost.

Wherefore plaintiff prays judgment against the defendant for the sum of $443,928 with six per cent interest thereon from the 4th day of November, 1922, and costs.

James H. McIntosh, Attorney for Plaintiff. Office and Post Office Address, 55 Liberty Street, City of New York, Borough of Manhattan.

[fol. 28] Duly sworn to by Thomas A. Buckner. Jurat omitted in printing.

[fol. 29] In United States District Court

[Title omitted]

Answer

The defendant above named by his attorney, William Hayward, United States Attorney for the Southern District of New York, answering the complaint herein alleges:

First: Upon information and belief, the defendant denies each and every allegation contained in paragraph number "III" of said complaint.

Second: Answering paragraph numbered "VI" of said complaint, defendant admits that in the year 1922, the Commissioner of Internal Revenue undertook to audit plaintiff's accounts for the four taxable periods ending June 30, 1919, 1920, 1921 and 1922 with respect to plaintiff's liability for capital stock tax and that the said Commissioner of Internal Revenue in or about the time alleged in said para- [fol. 30] graph undertook to and did amend the capital stock tax returns filed by the plaintiff for the aforesaid taxable periods and that as a result of said audit, the said Commissioner of Internal Revenue thereafter assessed against the plaintiff a capital stock tax for the year ending June 30, 1919, in the sum of $124,500., and for the year ending June 30, 1920, in the sum of $117,019., and for the year ending June 30, 1921, in the sum of $108,275., and for the year ending June 30, 1922, in the sum of $94,134.; the defendant further admits that on or about November 4, 1922, the plaintiff paid to the defendant the capital stock taxes assessed against the plaintiff in the amounts and for the years above set forth and that the defendant has failed and refused to pay back to said plaintiff the capital stock taxes paid by plaintiff to defendant as aforesaid or any part thereof; except as hereinafter specifically admitted, defendant denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in said paragraph numbered "VI" of said complaint.

As to the First Alleged Cause of Action

Third: Answering paragraph numbered "VIII" of said complaint, defendant repeats and realleges, and makes a part hereof, all of the allegations contained in paragraphs numbered "First" and "Second" hereinabove set forth.

Fourth: Answering paragraph numbered "IX" of said complaint:

[fol. 31] (a) Defendant denies upon information and belief each and every allegation in sub-paragraphs "a" and "b" of said paragraph contained.

(b) Defendant denies upon information and belief each and every allegation in sub-paragraph "c" of said paragraph contained.

(c) Defendant denies upon information and belief that part of sub-paragraph "d" wherein it is alleged that the Commissioner of Internal Revenue should have allowed as proper deductions in computing the tax due, the following three items mentioned in said sub-paragraph, to wit, deposits required by contract to be held for apportionment among and payment to deferred dividend policy holders amounting to $107,041,778., dividends declared on deferred dividend policies and payable absolutely, amounting to $14,123,549.64, and dividends declared on annual dividend policies and payable absolutely, amounting to $12,437,514.

(d) Defendant denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in sub-paragraph "f" of said paragraph.

(e) Upon information and belief, defendant denies that part of sub-paragraph "g" of said paragraph numbered "IX" of said complaint wherein it is alleged that the item of $107,041,778. should not have been included by the Commissioner of Internal Revenue, and that said item was [fol. 32] wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of $107,041,778 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(f) Upon information and belief, defendant denies that part of sub-paragraph "h" of said paragraph numbered "IX" of said complaint wherein it is alleged that the item of $14,123,549.64 should not have been included by said Commissioner, and was wrongfully and illegally included by said Commissioner, in computing said tax and wherein it is alleged that no part of said sum of $14,123,549.64 consisted of surplus or contingent reserves maintained for the gen-

eral use of the plaintiff's business and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(g) Upon information and belief, defendant denies that part of sub-paragraph "i" of said paragraph numbered "IX" of said complaint wherein it is alleged that the item [fol. 33] of $12,437,514. should not have been included by said Commissioner, and was wrongfully and illegally included by said Commissioner, in computing said tax and wherein it is alleged that no part of said sum of $12,437,514. consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of said Revenue Act of 1918, as of the close of the preceding accounting period, used by said plaintiff for the purpose of making its income tax return, or otherwise.

As to the Second Alleged Cause of Action

Fifth: Answering paragraph numbered "X" of said complaint, defendant repeats and realleges, and makes a part hereof, all of the allegations contained in paragraphs hereof numbered "First" and "Second" and in the sub-paragraphs of paragraph numbered "Fourth" which said sub-paragraphs are letter- respectively "a", "b" and "d".

Sixth: Answering paragraph numbered "XI" of said complaint:

(a) Defendant denies upon information and belief each and every allegation in sub-paragraph "a" of said paragraph continued.

(b) Defendant denies upon information and belief that part of sub-paragraph "b" of said paragraph "XI" [fol. 34] wherein it is alleged that the Commissioner of Internal Revenue should have allowed as proper deductions in computing the tax due, the following three items mentioned in said sub-paragraph, to wit, deposits required by contract to be held for apportionment among and payment

to deferred dividend policy holders amounting to $100,893,328, dividends declared on deferred dividend policies and payable absolutely, amounting to $19,000,738.13, and dividends declared on annual dividend policies and payable absolutely, amounting to $13,636,876.

(c) Defendant denies upon information and belief that part of sub-paragraph "c" of said paragraph numbered "XI" of said complaint wherein it is alleged that the item of $100,893,328 should not have been included by the Commissioner of Internal Revenue, and that said item was wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of $100,893,328 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(d) Defendant denies upon information and belief that part of sub-paragraph "d" of said paragraph numbered [fol. 35] "XI" of said complaint wherein it is alleged that the item of $19,000,738.13 should not have been included by the Commissioner of Internal Revenue, and that said item was wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of $19,000,738.13 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(e) Defendant denies upon information and belief that part of sub-paragraph "e" of said paragraph numbered "XI" of said complaint wherein it is alleged that the item of $13,636,876 should not have been included by the Commissioner of Internal Revenue, and that said item was wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of

$13,636,876 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

[fol. 36] As to the Third Alleged Cause of Action

Seventh: Answering paragraph numbered "XII" of said complaint, defendant repeats and realleges, and makes a part hereof, all of the allegations contained in paragraphs hereof numbered "First" and "Second" and in the sub-paragraphs of paragraph numbered "Fourth" which said sub-paragraphs are lettered respectively "a", "b" and "d".

Eighth: Answering paragraph numbered "XIII" of said complaint:

(a) Defendant denies that he has any knowledge or information sufficient to form a belief as to that part of sub-paragraph "a" of said paragraph numbered "XIII" of said complaint wherein it is alleged that plaintiff was taxed and duly paid the tax for the calendar year 1921 imposed under the provisions of Title II, Sections 242 to 245 inclusive, of the Revenue Act of 1921; and, upon information and belief, defendant denies each and every other allegation in said sub-paragraph "a" of said paragraph contained.

(b) Defendant denies upon information and belief each and every allegation in sub-paragraph "b" of said paragraph contained.

(c) Defendant denies upon information and belief that part of sub-paragraph "c" of said paragraph "XIII" wherein it is alleged that the Commissioner of Internal [fol. 37] Revenue should have allowed as proper deductions in computing the tax due, the following three items in said sub-paragraph, to wit, deposits required by contract to be held for apportionment among and payment to deferred dividend policy holders amounting to -88,157,964, dividends

declared on deferred dividend policies and payable absolutely, amounting to $18,194,897.56, and dividends declared on annual dividend policies and payable absolutely, amounting to $13,850,878.

(d) Defendant denies upon information and belief that part of sub-paragraph "d" of said paragraph numbered "XIII" of said complaint wherein it is alleged that the item of $88,157,964 should not have been included by the Commissioner of Internal Revenue, and that said item was wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of $88,157,964 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(e) Defendant denies upon information and belief that part of sub-paragraph "e" of said paragraph numbered "XIII" of said complaint wherein it is alleged that the [fol. 38] item of $18,194,897.56 should not have been included by the Commissioner of Internal Revenue, and that said item was wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of $18,194,897.56 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(f) Defendant denies upon information and belief that part of sub-paragraph "f" of said paragraph numbered "XIII" of said complaint wherein it is alleged that the item of $13,850,878 should not have been included by the Commissioner of Internal Revenue, and that said item was wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum

of $13,850,878 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

[fol. 39] As to the Fourth Alleged Cause of Action

Ninth: Answering paragraph numbered "XIV" of said complaint, defendant repeats and realleges, and makes a part hereof, all of the allegations contained in paragraphs hereof numbered "First" and "Second" and in the sub-paragraphs of paragraph numbered "Fourth" which said sub-paragraphs are lettered respectively "a", "b" and "d" and also in sub-paragraph "a" of paragraph "Eighth" hereof.

Tenth: Answering paragraph numbered "XV" of said complaint:

(a) Defendant denies upon information and belief each and every allegation in sub-paragraph "a" of said paragraph contained.

(b) Defendant denies upon information and belief that part of sub-paragraph "b" of said paragraph "XV" wherein it is alleged that the Commissioner of Internal Revenue should have allowed as proper deductions in computing the tax due, the following three items mentioned in said sub-paragraph, to wit, deposits required by contract to be held for apportionment among and payment to deferred dividend policy holders amounting to $76,176,646, dividend declared on deferred dividend policies and payable absolutely, amounting to $21,015,315.87, and dividends declared on annual dividend policies and payable absolutely, amounting to $16,431,339.

(c) Defendant denies upon information and belief that part of sub-paragraph "c" of said paragraph numbered [fol. 40] "XV" of said complaint wherein it is alleged that the item of $76,176,646 should not have been included by the Commissioner of Internal Revenue, and that said item was

wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of $76,176,646 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

(d) Defendant denies upon information and belief that part of sub-paragraph "d" of said paragraph numbered "XV" of said complaint wherein it is alleged that the item of $21,015,315.87 should not have been included by the Commissioner of Internal Revenue, and that said item was wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of $21,015,315.87 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

[fol. 41] (e) Defendant denies upon information and belief that part of sub-paragraph "e" of said paragraph numbered "XV" of said complaint wherein it is alleged that the item of $16,431,339 should not have been included by the Commissioner of Internal Revenue, and that said item was wrongfully and illegally included by said Commissioner, in computing said tax, and that no part of said sum of $16,431,339 consisted of surplus or contingent reserves maintained for the general use of the plaintiff's business, and that no part thereof consisted of reserves the net additions to which were included in net income under the provisions of Title II of the Revenue Act of 1918, as of the close of the preceding accounting period used by said plaintiff for the purpose of making its income tax return, or otherwise.

Wherefore defendant demands judgment dismissing the complaint with costs.

William Hayward, United States Attorney for the Southern District of New York, Attorney for Defendant. Office & P. O. Address, U. S. Courts & Old Post Office Bldg., City of New York.

[fol. 42] *Duly sworn to by Frank K. Bowers. Jurat omitted in printing.*

[fol. 43] IN UNITED STATES DISTRICT COURT

NEW YORK LIFE INSURANCE Co., Plaintiff,

against

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York, Defendant

James H. McIntosh, Attorney for Plaintiff.

Charles H. Tuttle, United States Attorney, Attorney for Defendant; Samuel C. Coleman, of Counsel.

OPINION—May 25, 1929

MACK, Circuit Judge:

Action to recover capital stock taxes assessed under Title X of the 1918 Revenue Act; 40 Stat. 1126, tried upon stipulated facts.

The first question is whether, admitting the applicability of the 1918 Act for the years in question, the assets of plaintiff in respect to which the assessment was made were taxable thereunder. For each of the years these assets were: (1) such sums as about two weeks after the close of the year the corporate officers resolved to take out of the Un- [fol. 44] divided Surplus Account for payment as annual dividends to policy holders having the right to share in surplus on the next anniversary of their policies; (2) sums taken out of the Surplus Account in like manner for payment as accumulated dividends to holders of deferred dividend policies maturing during the course of the ensuing

year; (3) the aggregate of dividends provisionally declared out of the Surplus Account in previous years and for the year in question, to be held against deferred dividend policies maturing in future years: these were held in an Interim Accumulation Fund.

The 1918 Act provides:

"Sec. 1000 (a) That on and after July 1, 1918, in lieu of the tax imposed by the first subdivision of Section 407 of the Revenue Act of 1916:

(1) Every domestic corporation shall pay annually a special excise tax with respect to carrying on or doing business, equivalent to $1 for each $1,000 of so much of the fair average value of its capital stock for the preceding year ending June 30 as is in excess of $5,000. In estimating the value of capital stock the surplus and undivided profits shall be included;

(2) Every foreign corporation shall pay annually a special excise tax with respect to carrying on or doing business in the United States, equivalent to $1 for each $1,000 of the [fol. 45] average amount of capital employed in the transaction of its business in the United States during the preceding year ending June thirtieth.

(b) In computing the tax in the case of insurance companies such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included.

(c) The taxes imposed by this section shall not apply in any year to any corporation which was not engaged in business (or in the case of a foreign corporation not engaged in the business in the United States) during the preceding year ending June 30, nor to any corporation enumerated in Section 231. The taxes imposed by this section shall apply to mutual insurance companies, and in the case of every such domestic company the tax shall be equivalent to $1 for each $1,000 of the excess over $5,000 of the sum of its surplus or contingent reserves maintained for the general use of the business and any reserves the net additions to which are included in net income under the provisions of Title II, as of the close of the preceding ac-

counting period used by such company for purposes of making its income tax return: * * * "

The preceding Act of 1916 had provided merely (§407, 39 Stat. 789) that insurance companies should be taxable [fol. 46] upon the value of their capital stock minus certain deductions, with the result as set forth in Regs. 38 Art. 2b (T. D. 2383) that "Inasmuch as the basis of tax is the fair value of the stock of a corporation, mutual insurance companies and other associations not having a stock represented by shares will also be exempt from tax, in the absence of a basis for the computation of the tax." The legislative history of the 1918 Act shows clearly that Congress intended thereby to establish an effective basis of taxation for mutual life insurance companies. In spite of this evident intention plaintiff contends for an interpretation of the statute which makes it almost as wholly inoperative as the 1916 Act, not only in the present case but necessarily also in other cases.

It is argued that subdivision (b) of Section 1000, providing for the deduction of "such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of or payment to or apportionment among policyholders shall not be included", applies also to the parts of subdivision (c), governing mutual companies. The arrangement of the provisions indicates the contrary; for example, the parts of (c) in question are isolated from (b) by another provision so wholly distinct that its placement there would be unreasonable if what followed it were intended to refer back to what preceded it. But in any event the more specific (c) would supersede (b) rather than be limited by it; fair interpretation often requires that one of two provisions be read broadly enough [fol. 47] to conflict with and override another rather than that it be limited to a meaning not inconsistent with the other. See Hopkins v. Zeigler, 259 Fed. 43, 47. The application of a capital stock tax to mutual and to stock insurance companies presents such different problems that in order to effect equality of treatment there must be formally different rules for the two, not the same rule as plaintiff contends. For example, since the capital stock tax takes account of the market value of stock as well as

the asset value, it is possible greatly to enhance the assessments of insurance stock by reason of the highly valuable element of control, while the same factor must be disregarded in the assessment of mutual companies; therefore, by way of equalization, deductions allowed in the former assessments may well be denied in the latter. If these considerations did not sufficiently disprove the applicability of subdivision (b), it would be necessary to consider whether the assets here in question are such as (b) refers to, in view of the fact that until they were ascertained in the middle of January of the next succeeding year there were no such specific funds or accounts on the books subject to either legal or contractural requirements specified in (b). On the other hand, in a mutual company the entire property of the company, including all deposits and reserve funds subject only to liabiilties are held "for payment to or apportionment among the policy-holders", inasmuch as they are the only ones to share therein.

Subdivision (c) taxes, inter alia, "surplus or contingent reserves maintained for the general use of the business", [fol. 48] and in my judgment the three items here in question were part of such surplus for the taxable year. They were not, as plaintiff designates them, a trust fund; and they were not a liability except in the accounting sense. The first two items existed throughout the year as an unsegregated part of the corporate assets: nobody had any claim to them as against the corporation until at the earliest the middle of January of the next year, when the directors in their discretion decided how much should be set aside for the payment of dividends. They were like any undistributed corporate surplus. The same is demonstrably true of the Interim Accumulation Fund, to which nobody could have any claim for at least thirteen months to come. It is immaterial whether the phrase "maintained for the general use of the business" modifies "surplus" as well as "contingent reserves", for in a sense any surplus of an insurance company is necessarily maintained for the general use of the business, being employed in the financial operations and available to meet obligations. If in fact any or all of these amounts had been segregated by the company and specifically maintained as trust funds for the intended beneficiaries, a totally different situation would

be presented. They would then be no part of the surplus: they could not be reached by creditors; but naturally the financial stability of the Company would be correspondingly impaired.

It is not necessary to decide whether the three items would not also be taxable as reserves (using that word in a perhaps non-technical sense) "the net additions to which [fol. 49] are included in net income under the provisions of Title II"; but certainly there is nothing in Title II which would prevent such characterization.

The contention has not been made that the amounts stipulated as surplus on hand at the end of each year in question may exceed the fair average surplus on hand during the year (not including dividends already declared for payment on anniversaries occurring later in the year, and that it may have been the intent of the statute to designate this average amount as the basis; moreover no figures have been stipulated by which the average could be computed.

We come then to the second question in the case, namely whether the capital stock tax provisions of Title X § 1000 of the 1918 Revenue Act (40 Stat. 1126) applicable to mutual life insurance companies were in force during the two years beginning July 1st of 1920 and 1921.

The Revenue Act of 1921 became law on November 23, 1921. Section 243 (42 Stat. 261) provided "That in lieu of the taxes imposed by Sections 230 and 1000 and by Title III, there shall be levied, collected, and paid for the calendar year 1921 and for each taxable year thereafter upon the net income of every life insurance company * * *" a tax measured by income. Section 1400 (42 Stat. 320) read: "That the following parts of the Revenue Acts of 1918 are repealed, to take effect (except as otherwise provided in this Act) on January 1, 1922, subject to the limitations provided in subdivision (b) * * * Title X." The subdivision referred to was: "The parts of the Revenue Act of [fol. 50] 1918 which are repealed by this Act shall (unless otherwise specifically provided for in this Act) remain in force for the assessment and collection of all taxes which have accrued under the Revenue Act of 1918 at the time such parts cease to be in effect * * *. In the case of any tax imposed by any part of the Revenue Act of 1918 repealed by this Act, if there is a tax imposed by this Act in

lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act * * *."

In my judgment the 1918 Act was in effect during the period covered by the third but not by the fourth assessment. The capital stock tax payable on July 1st of any year was for the privilege of doing business during the year just elapsed, as is shown by the fact that corporations which had not engaged in business during the preceding year were not subject thereto, even more clearly than by the fact that its measure was the average value of the capital stock during the preceding year. Therefore on July 1, 1921, plaintiff came under an absolute liability to pay taxes for the privilege theretofore exercised. A statute enacted after that date might admittedly relieve it of this liability, but such Congressional intent is not lightly to be presumed. Here on the contrary the 1921 Act specifically provided that the 1918 Act was repealed only as of January 1, 1922. It is true than an income tax was by the 1921 Act, § 243 imposed for the year beginning January 1, 1921. This section was not however, as plaintiff [fol. 51] contends, in lieu of the 1918 tax; it was in lieu of the provisions of the 1921 Act, governing the taxation of corporations generally. Without deciding whether Wilmington Trust Co. v. U. S., 28 F. (2d) 205 would be followed even if in point, it suffices that the case is distinguishable for the reason among others that the estate tax there involved was regarded by the court as imposing no liability until one year after death, a date later than the passage of the 1921 Act.

On the other hand, the tax collected under the fourth assessment was for the privilege of doing business between July 1, 1921 and June 30, 1922; it would have become due only on July 1, 1922, whereas the repeal had become effective on January 1st. It is immaterial that the taxing statute was in effect during half the period, since Congress did not and this court cannot adopt any new measure of liability or a new date for its accrual. Subdivson (b) of section 1400 does not keep the 1918 provision alive, since the tax had not accrued by January 1st and no substitute tax was to come into effect after the repeal date; the report of the Senate Finance Committee accompanying the Rev-

enue Act of 1921 likewise is not inconsistent with the foregoing. Plaintiff therefore is entitled to judgment for the sum collected pursuant to the assessment for the year ending June 30, 1922, namely, $94,134.00, together with interest.

Julian W. Mack, U. S. Circuit Judge.

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECISION AND ORDER FOR JUDGMENT—June 27, 1929

The parties hereto having duly filed with the Clerk of the said Court a stipulation in writing waiving a jury and agreeing therein that the Court might try and determine the case without the intervention of a jury, thereupon said cause came on to be heard before the Honorable Julian W. Mack, United States Circuit Judge, at a stated term of the United States District Court for the Southern District of [fol. 53] New York held on the 27th day of June, 1929, at the United States Court Rooms in the Woolworth Building in the Borough of Manhattan in the City, County and State of New York in the Southern District of New York, and the plaintiff having appeared herein by James H. McIntosh, its attorney, and the defendant having appeared by Charles H. Tuttle, United States District Attorney for the Southern District of New York, its attorney, by Samuel C. Coleman, Assistant United States Attorney for the Southern District of New York, and by the Honorable Edward H. Horton, Special Attorney for the Bureau of Internal Revenue, thereupon said cause duly came on to be heard and was submitted to the Court by the respective counsel of record of the parties thereto on the pleadings and the agreed statement of facts signed by counsel for the respective parties, duly filed and made a part of the record in this cause, and upon no other evidence whatever, and the arguments of counsel.

Upon consideration whereof the Court, being fully advised in the premises, finds that said agreed statement of

facts is a full, complete and true statement of all the facts bearing upon the issues in this cause and therefore the Court makes said agreed statement of facts and each and every part and paragraph thereof and the exhibits attached thereto the findings of the Court as fully and with the same force and effect as if said agreed statement of facts and the exhibits attached thereto were herein written at length.

[fol. 54] From the pleadings and the facts so found the Court makes the following.

Conclusions of Law

First: The plaintiff is not entitled to recover on its First Cause of Action involving the capital stock tax paid for the period ending June 30, 1919. To which conclusion of law the plaintiff at the time excepted.

Second: The plaintiff is not entitled to recover on its Second Cause of Action involving the capital stock tax paid for the period ending June 30, 1920. To which conclusion of law the plaintiff at the time excepted.

Third: The plaintiff is not entitled to recover on its Third Cause of Action involving the capital stock tax paid for the period ending June 30, 1921. To which conclusion of law the plaintiff at the time excepted.

Fourth: The plaintiff on its Fourth Cause of Action is entitled to recover from the defendant the sum of Ninety-four Thousand One Hundred Thirty-four Dollars ($94,134) on account of the capital stock tax paid by it for the period ending June 30, 1922, with interest thereon at six per cent (6%) per annum from the 4th day of November, 1922, to the date of the judgment herein together with the costs of this action. To which conclusion the defendant duly excepted, praying that the court hold that the Fourth Cause [fol. 55] of Action states no cause of action. It is therefore

Ordered that the plaintiff's complaint be dismissed as to its First, Second and Third Causes of Action, respectively, and that the plaintiff have judgment against the defendant on its Fourth Cause of Action for the sum of Ninety-four Thousand One Hundred Thirty-four Dollars ($94,134) with

six per cent (6%) interest thereon from the 4th day of November, 1922, together with the costs of this suit, and the Clerk of this Court is hereby directed to tax such costs and to enter judgment hereon in accordance herewith.

Julian W. Mack, Judge.

Notice of Settlement waived.

Charles H. Tuttle U. S. Attorney.

[fol. 56] IN UNITED STATES DISTRICT COURT

No. L31-259

NEW YORK LIFE INSURANCE COMPANY, Plaintiff,

against

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York, Defendant

JUDGMENT

The parties hereto having duly filed with the Clerk of said Court a stipulation in writing waiving a jury and agreeing therein that the Court might try and determine the case without the intervention of a jury, and said cause having duly come on to be heard on the 27th day of June, 1929, and having been submitted to the Court on the pleadings and the agreed statement of facts and the arguments of counsel, and the Court, being fully advised in the premises, having duly made and filed its written decision herein whereby it found against the plaintiff on its First, Second and Third Causes of Action, and for the plaintiff on its Fourth Cause of Action, and ordered that the plaintiff's complaint be dismissed as to the First, Second and Third Causes of Action and that the plaintiff have judg-
[fol. 57] ment against the defendant on its Fourth Cause of Action for the sum of Ninety-four Thousand One Hundred and Thirty-four Dollars ($94,134) with six per cent (6%) interest thereon from the 4th day of November, 1922, and costs, and the costs of the plaintiff having been duly taxed at the sum of $18.70,

It is therefore considered and adjudged that the plaintiff's complaint be dismissed as to its First, Second and Third Causes of Action, and that the plaintiff recover of the defendant on its Fourth Cause of Action the sum of Ninety-four Thousand One Hundred Thirty-four Dollars ($94,134) with interest from November 4, 1922, according to law together with Eighteen & 70/100 ($18.70) costs as taxed and that the plaintiff have execution hereon therefor.

Alex. Gilchrist, Jr., Clerk.

Dated, New York, June 27th, 1929.

[fol. 58] IN UNITED STATES DISTRICT COURT

STIPULATION FOR TRIAL UPON AGREED STATEMENT OF FACTS

[Title omitted]

It is hereby stipulated and agreed that the issues of fact in the above enitled case may be tried and determined by the Court without the intervention of a jury upon the Agreed Statement of Facts made by the parties hereto, which shall be deemed and treated as a specific finding of fact by the Court.

New York Life Insurance Company, by James H. McIntosh, its Attorney. Frank K. Bowers, as Collector, &c., by Charles H. Tuttle, U. S. Attorney for Defendant.

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF EXCEPTIONS

Be it remembered that a jury having been duly waived in writing, this cause came on to be heard at a stated term of this Court begun and holden in the City of New York in and for the Southern District of New York on the 27th day of June, 1929, before Honorable Julian W. Mack, Circuit

Judge, upon the pleadings and the agreed statement of facts and the exhibits attached thereto signed by the respective parties hereto and filed herein, the plaintiff appearing by James H. McIntosh, its attorney, and the defendant appearing by Charles H. Tuttle, United States District Attorney for the Southern District of New York, its attorney, by Samuel C. Coleman, Assistant United States Attorney for the Southern District of New York, and by the Honorable Edward H. Horton, Special Attorney for the Bureau of Internal Revenue, which said agreed statement of facts and the exhibits attached thereto was and is as follows, to wit:

[fol. 60] AGREED STATEMENT OF FACTS

It is hereby stipulated and agreed, by and between the parties hereto by their respective attorneys, that the following facts shall be taken as true, provided however that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

First: Plaintiff is a life insurance corporation duly incorporated in the year 1843 under a special charter, and existing under and by virtue of the laws of the State of New York. The business of the plaintiff is, and always has been, making insurance upon the lives and health of persons, and all and every insurance appertaining to life, granting annuities and making endowments. The plaintiff is a mutual company transacting the business of life insurance on the purely mutual, level premium plan and issues both "annual dividend" and "deferred dividend" policies, and has not, and never has had, any capital stock or stockholders. Each policyholder of the plaintiff is a member of the corporation. The business of the plaintiff is and always has been managed and conducted by a Board of Directors and by such officers as the Board of Directors shall authorize and appoint. The plaintiff's directors are elected by its policyholders, each policyholder whose insurance is in force and shall have been in force at least one year prior to any election is entitled to vote for the election of directors without other qualification, and no other person is entitled to vote [fol. 61] for the election of directors of the plaintiff. The plaintiff's principal office and place of business is in the

city, county and state of New York, in the Second Internal Revenue District in said state. It commenced its said business in the year 1845, and has ever since been, and still is, engaged in such business, and continuously for more than twenty-five years last past the plaintiff has been duly licensed to transact, and has been engaged in transacting its said business of life insurance in the several states, territories and possessions of the United States, in the District of Columbia and in many foreign countries. Its insurance policies are all issued on the mutual, level premium plan.

Second: Plaintiff duly made and filed with the Collector of Internal Revenue for the Second Internal Revenue District of the State of New York on forms prescribed by the Treasury Department for that purpose, under the oath of its President and Treasurer, original and amended returns for the several fiscal years ending June 30, 1919, June 30, 1920, June 30, 1921, and June 30, 1922, for the special taxes imposed by Section 1,000, Title X, of the Revenue Act of 1918, ordinarily referred to as "Capital Stock Tax", said original and amended returns showing no capital stock taxes due from said plaintiff under said Section 1000 for said fiscal years or any of them.

Third: Plaintiff made and filed its said capital stock tax returns for said respective periods in good faith and in the honest belief that the same contained a full, complete and [fol. 62] true return for the purposes of said tax and no part or item of said return was wilfully false or fraudulent, nor did said return contain any wilful or intentional understatement or undervaluation.

Fourth: Thereafter the Commissioner of Internal Revenue, as the result of a final audit of plaintiff's several returns, determined and found and duly assessed against said plaintiff capital stock taxes as follows:

For the year ending June 30, 1919	$124,500.00
For the year ending June 30, 1920	117,019.00
For the year ending June 30, 1921	108,275.00
For the year ending June 30, 1922	94,134.00

Fifth: Thereafter defendant as Collector of said District duly served upon said plaintiff notice of each of said several assessments and demanded payment thereof, and said plain-

tiff on November 4, 1922, pursuant to said notice and demand and to avoid the imposition of threatened penalties for nonpayment thereof, paid to said defendant involuntarily and under written protest said capital stock taxes and each of them.

Sixth: Thereafter, on November 23, 1922, plaintiff duly filed, in accordance with law and the Regulations of the Secretary of the Treasury, its claim for refund of said capital stock taxes theretofore paid by it on November 4, 1922, and each of them and of every part and item thereof, which claim for refund was duly rejected by said Commis- [fol. 63] sioner of Internal Revenue on March 31, 1923, and no part of said capital stock taxes, as aforesaid paid by said plaintiff, have been refunded.

Seventh: Plaintiff's insurance policies are all issued on the mutual, level premium plan. The level premium plan is one under which the maximum annual contribution which any member can be asked to pay is uniform throughout the life of the policy. The person insured pays during his early years a sum in excess of the current cost of his insurance. The excess is devoted to the creation of a reserve fund, which enables the insurance to be maintained in the later years, which the stipulated level premium would be insufficient to meet the current cost of insurance on the level premium plan. It is the essence of mutual life insurance on the level premium plan that each policyholder is entitled to receive his insurance at cost; the company collecting its estimated or level premiums in advance and adjusting the actual cost afterwards when cost is known.

Eighth: The Table Rate of Premium provided for in life insurance on the mutual, level premium plan is calculated, first, by adopting an accepted table of mortality showing the death rate for each age of life; and second, by adopting an assumed rate of interest such as the company may safely expect to realize upon its invested assets for the duration of all its policies. With these two factors it is calculated just what sum each insured must pay yearly in advance so [fol. 64] as to put the company in funds with which to pay all outstanding policies as they become claims, provided deaths occur exactly in accordance with the Table of Mortality, and also provided the rate of interest earned on the

company's invested funds is exactly the same as the rate assumed in calculating its premiums. The sum ascertained in this way is called the net or mathematical premium. But the net or mathematical premium is not the full amount each member must pay into a going concern, because it contains no provision for expense of management and unforeseen contingencies such as excess mortality, diminished interest, investment losses, increased taxation, and the like. Therefore, to provide for these, there is added to the net or mathematical premium a sum technically called "loading". The net or mathematical premium plus the loading constitutes the company's Table Rate of Premium or level premium, and is the estimated sum named in the policy as premium to be paid in advance and adjusted to cost when cost is known, and is the maximum sum which the company can ever require the insured to pay.

Ninth: Article VIII of plaintiff's charter provides as follows:

"As soon as practicable after the 31st day of December each year, the officers of said corporation shall cause a statement to be made of the true state of its affairs and shall well and truly ascertain the surplus earned by it during said year, which said ascertainment of surplus shall [fol. 65] be binding and conclusive upon every person entitled to share in its surplus."

In addition, the laws of the State of New York, and of other states in which plaintiff does business require that such an account be taken, and plaintiff as soon as practicable after the end of each calendar year takes an account of its business for the year just ended for the purpose of ascertaining the true state of its affairs and the amount of surplus earned by it during said year, as well as the amount of surplus for the current and prior years, which in the judgment of plaintiff's Board of Directors may safely be distributed. In doing so plaintiff adds to the total sum received as premiums for such year the total sum received by it during the year from all other sources, and the total of these sums constitutes plaintiff's total receipts for such year. Plaintiff then ascertains the amount of policy claims paid for such year, the amount of its current expenses for such year, the several sums required to in-

crease its reserves, and the several sums which in the judgment of plaintiff's officers and directors are required to increase the sum held for contingencies, and adds these sums together, which deducted from plaintiff's total receipts for such year leaves a difference as thus calculated which constitutes in the judgment of plaintiff's officers and directors the overpayment of premiums or surplus contributed by its policy holders in said year subject to distribution by said Board of Directors. The last named sum [fol. 66] thus ascertained is increased by an amount transferred to plaintiff's Undivided Surplus account, the result being the total sum which in the judgment of plaintiff's officers and directors is available for distribution by said Board of Directors.

Tenth: On January 10, 1918, plaintiff's officers, pursuant to Article VIII of plaintiff's charter, submitted to plaintiff's Board of Directors a report of the true state of the affairs of said company for the year ending December 31, 1917, the reports of said plaintiff's officers for the years ending December 31, 1918, December 31, 1919, and December 31, 1920, being substantially identical in form, and differing from the report for the said year ending December 31, 1917, only, in the amounts of the several items and dates therein set forth.

Said report for said year ending December 31, 1917, shows that the surplus or overpayments of premiums made by plaintiff's policyholders for said year, as by them calculated, was the sum of $30,518,736.47, and plaintiff's officers recommended that there be added thereto the sum of $28,215,108.08, to be transferred from plaintiff's "Latent Fund for Contingencies and Dividends" (the latter representing the excess of the book value of plaintiff's assets over the market value thereof) to the "Undivided Surplus Account", making in said last named account a total of the sums of $30,518,736.47 and $28,215,108.08, or $58,733,844.55. Said officers further recommended that from said "Undivided Surplus Account" of $58,733,844.55 there be set [fol. 67] aside the sum of $46,296,330.55, and that the balance of said "Undivided Surplus Account", to wit, $12,437,514.00, be appropriated to pay dividends to those policies participating annually in surplus (annual dividend policies) on their anniversaries in the year 1918.

Said officers further recommended that out of said sum of $46,296,330.55 the sum of $12,449,468.91 be credited to plaintiff's "Security Fluctuation and General Contingency Fund", and that the balance thereof, $33,846,861.64 be credited to plaintiff's "Interim Accumulation Fund", this being the sum held by the company awaiting apportionment among and payment to its deferred dividend policyholders on the several dates named in their respective policies for paying such dividend, and thereby increasing plaintiff's said "Interim Accumulation Fund" to the sum of $121,165,327.64, out of which last named sum plaintiff's officers recommended that $14,123,549.64 be appropriated for the payment of dividends to plaintiff's deferred dividend policyholders whose policies were to mature in the year 1918, and on which the premiums were paid in full to the dates of maturity in their respective accumulation periods in 1918, and which were in force at such dates in 1918, leaving a balance in said "Interim Accumulation Fund" of $107,041,778.00, to be held by the company awaiting apportionment among and payment to its deferred dividend policyholders on the several dates named in their respective policies for paying a dividend in the years subsequent to 1918.

[fol. 68] A true and correct copy of said report and recommendations of plaintiff's said officers, dated January 10, 1918, and showing the action of plaintiff's Board of Directors January 4, 1918, adopting said recommendations, is attached hereto and made part hereof as Exhibit A, and for subsequent years as Exhibits B, C and D, respectively.

Eleventh: Plaintiff's outstanding contracts provide for accounting to its policyholders for the amount of divisible surplus, as above determined by plaintiff's Board of Directors, on two general plans—one of them known as the annual dividend plan, and the other as the deferred dividend plan—and accordingly, when the amount of divisible surplus to plaintiff's annual and deferred dividend policyholders is determined the same is divided between its annual dividend policyholders as a group and its deferred dividend policyholders as a group in proper proportion; but at the accounting the amount of divisible surplus is the same for each $1,000 of insurance on policyholders of

the same age and insurance plan whether the policy is on the deferred or is on the annual dividend plan; that is, if the amount of the determined distributable surplus apportioned to the deferred dividend policyholders as a group were distributed among them for payment during the year as is done in the case of annual dividend policies each deferred dividend policyholder would receive the same sum for each $1,000 of insurance as each annual dividend policyholder of the same age and insurance plan receives.

[fol. 69] Twelfth: A representative policy contract written on the annual dividend plan provides for accounting to the insured each year on the anniversary of his policy for the annually ascertained divisible surplus for the prior year or years as above determined as follows:

"The proportion of divisible surplus accruing on this Policy shall be ascertained and distributed annually and not otherwise, and at the option of the Insured shall each year, on the anniversary of the Policy, be either

"(1) Paid in Cash; or

"(2) Applied toward the payment of any premium or premiums; or

"(3) Applied to the purchase of participating Paid-up Additions to the Policy, or

"(4) Left to accumulate to the credit of the Policy, with compound interest at the rate of three per centum per annum, and payable at the maturity of the policy, but withdrawable on any anniversary of the Policy.

"Unless the Insured shall elect otherwise within three months after the mailing by the Company of a written notice requiring the election of one of the four above options, the dividends shall be applied to the purchase of participating Paid-up Additions (Option No. 3) which may [fol. 70] be surrendered for cash at any time, and the Cash Value thereof shall not be less than the original cash dividends."

Thirteenth: In its deferred dividend policies the plaintiff agreed on a specific date named therein, usually twenty

years but in some policies ten, fifteen or other period of years after the insurance took effect, to account to the deferred dividend policyholders for the amount of the annually ascertained divisible surplus, as above determined and credited to plaintiff's deferred dividend policyholders as a class, plus accumulated interest thereon and plus a proportionate share of the accumulative overpayments of all policyholders of his class whose several policies were not in force on the date named therein for paying a dividend, and for this purpose all deferred dividend policies issued in a calendar year and providing for the payment of a dividend in the same calendar year constituted a class.

The following is plaintiff's representative form for accounting to its policyholders on the deferred dividend plan:

"This Policy is issued on the Distribution Policy Plan, the particulars of which are as follows:

"That the Distribution Period of this Policy shall be completed on the — day of ——, in the year ——.

"That no dividend of surplus shall be allowed or paid upon this Policy, unless the insured shall survive until com- [fol. 71] pletion of its Distribution Period, and unless this Policy shall then be in force.

"That surplus or profits derived from such Policies on the Distribution Policy Plan as shall not be in force at the date of the completion of their respective Distribution Periods, shall be apportioned among such Policies as shall complete the Distribution Periods.

"That after the completion of the Distribution Period, provided this policy shall not have been previously terminated, this Policy shall secure to the Insured one of the following benefits:

"First: To apply the accumulated surplus apportioned by the Company to this Policy to the purchase of an Annuity on the life of the Insured to be used in reduction of subsequent premiums on this Policy, and in case the amount accruing in any year from the Annuity shall exceed the amount of premium due thereon the excess to be paid in cash.

"Second: To continue the Policy for the original amount and withdraw in cash the accumulated surplus apportioned by the Company to this Policy.

"Third: To withdraw in cash the Entire Equity that is, the net reserve, being —— Dollars and — cents ($——), and in addition thereto the accumulated surplus aforesaid.

[fol. 72] "Fourth: To convert the Entire Equity into a Paid-up Policy, without participation in profits, for an amount to be determined by the method then in use by the Company in determining Paid-up Policies of this class; provided that this Policy is legally surrendered during the life-time of the Insured, and within ninety days from the completion of the Distribution Period, and provided further that no Paid-up Policy shall be issued for any amount in excess of the original insurance, except upon a medical re-examination satisfactory to the Company.

"Fifth: The conversion of the Entire Equity into a life Annuity upon the life of and payable to the insured.

"Sixth: To continue the Policy for the original amount and convert the apportioned surplus into a Reversionary Addition conditioned upon satisfactory re-examination.

"These benefits are at the option of the Insured; but it is understood and agreed that, not less than three months prior to the completion of the Distribution Period, the said Insured shall notify the Company, in writing, which benefit is selected; and that if no such notification shall be received, then, and in that case, the surplus apportioned to this Policy shall be applied to the purchase of an Annuity as stipulated in the 'first benefit' named above."

[fol. 73] A deferred dividend policyholder may lose or forfeit any share in the annually ascertained divisible surplus, as above determined, by lapsing or surrendering his policy, or by dying before the dividend date named in his policy, in which event the amount to which he would have become entitled remains in the fund to be distributed among and paid to the surviving members who paid their premiums and whose policies were in force on maturity of the same in the year in which the dividend became payable.

Fourteenth: Every life insurance company is required by law to file annually in each state where it transacts business in the office of the Superintendent of Insurance, or other corresponding state officer having supervision of insurance, a report showing among other things its income

and disbursements for the preceding calendar year, which report must include a statement of its assets and liabilities.

Such reports are required to be made upon uniform blank forms prepared by a committee of, and adopted by, the National Association of Insurance Commissioners, and known as "Convention Edition" Forms.

Such annual reports in the State of New York must be filed within sixty days of the close of the preceding calendar year and as of December 31st of such year.

Plaintiff duly filed with the Superintendent of Insurance of said State of New York said Convention Edition Forms for the calendar years 1916 to 1920, inclusive. (Attached hereto and made a part hereof are true copies of the first [fol. 74] five pages of each of said reports; that for the year 1916 being marked Exhibit E, that for the year 1917 being marked Exhibit F, that for the year 1918 being marked Exhibit G, that for the year 1919 being marked Exhibit H, and that for the year 1920 being marked Exhibit I.)

Fifteenth: Said Commissioner, in assessing said capital stock tax paid for the fiscal year ending June 30, 1919, deducted from the book value of plaintiff's "admitted assets" as of December 31, 1917, (shown on line 47, page 4, Exhibit F)		$934,929,381.52
1. The difference between the book-value and the market-value of said "admitted assets"	$50,291,672.51	
2. The amount of the legal reserves as shown by items 7, 8 and 9 on page 5 of Exhibit F	734,510,999.13	
3. The total of items 10 to 34, both inclusive, and items 43, 44, 45 and 46, shown on page 5 of said Exhibit F	25,621,386.39	
4. Exemption	5,000.00	
Total deductions		810,429,008.03
Leaving a difference of		$124,500,373.49

[fol. 75] upon which last aforementioned sum said Commissioner levied, assessed and collected said capital stock tax of $124,500.00 for said fiscal year ending June 30, 1919.

Sixteenth: At the end of the calendar year 1917 plaintiff had on hand as shown by its annual report as of December 31, 1917, to the Insurance Department of the State of New York, Exhibit F page 5, the following:

"Item 35. Dividends declared on or apportioned to annual dividend policies payable to policyholders to and including December 31, 1918, whether contingent upon the payment of renewal premiums or otherwise" $12,437,514.00

This item, determined as above set forth, was the amount set aside by plaintiff's Board of Directors for apportionment among and return to plaintiff's annual dividend policyholders on the anniversary of their respective policies in 1918 pursuant to the terms thereof and to a resolution passed by plaintiff's Board of Directors at their January 14, 1918, meeting, reading as follows, to wit:

"Resolved, That the remainder of the surplus, being the amount of $12,437,514.00, be appropriated from the Undivided Surplus Account, out of which shall be paid to those policies which participate annually in surplus on their anniversaries in 1918, a dividend as shown in Schedule A [fol. 76] of the Actuaries' Report, including an extra dividend to the Contribution Annual Dividend policies issued in 1908 and 1913, as shown in said Schedule A; and that inasmuch as no surplus has been earned upon the Contribution Annual Dividend policies issued in the year 1917, and dating from that year, no dividend be appropriated to such policies nor paid to them in the year 1918."

These dividends were payable and plaintiff paid them on the anniversary of each annual dividend policy whether the premiums then due were paid or not. If the insured was then living it was paid to him; if not, then to the beneficiary to its annual dividend policies issued since 1906 by the named in his policy. Plaintiff on its records often refers expression "Contribution Annual Dividend Policies".

"Item 36. Dividends declared on or apportioned to deferred dividend policies payable to policyholders to and including December 31, 1918" $14,123,549.64

This item is shown on plaintiff's Annual Report for the year ending December 31, 1917, to the Insurance Department of the State of New York (Exhibit F page 5) as Item 36, and was the aggregate amount appropriated out of plaintiff's "Interim Accumulation Fund" of $121,165,327.64 then held by plaintiff for its deferred dividend policyholders, and was declared as a dividend by plaintiff's Board of Directors at their January 14, 1918, meeting to be dis-
[fol. 77] tributed among and paid to plaintiff's deferred dividend policyholders whose several policies matured during, and upon which plaintiff was required to pay accumulated deferred dividends in, the calendar year 1918.

Covering said Item 36 plaintiff's Board of Directors at said meeting of January 14, 1918, adopted four several resolutions as follow, to wit:

"Resolved, That the sum of $293,448.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all policies with 5-Year Period dividends issued in the years 1888, 1893, and 1903, respectively, on which the premiums shall have been paid in full to their anniversaries in 1918, and which shall be in force at such anniversaries, a dividend as shown in Schedule B of the Actuaries' Report.

"Resolved, That the further sum of $13,793,549.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all Accumulation policies, on which the premiums shall have been paid in full to the dates of maturity of their respective Accumulation periods in 1918, and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report.

"Resolved, That the further sum of $25,087.00 be appro-
[fol. 78] priated from the Interim Accumulation Fund, out of which shall be paid to all 7-Year Equalization policies issued in the year 1904, on which the premiums shall have been paid in full to their anniversaries in 1918, and which shall be in force at such anniversaries, a dividend as shown in Schedule C of the Actuaries' Report.

"Resolved, That the further sum of $11,555.64 be appropriated from the Interim Accumulation Fund, out of which shall be paid to Children's Endowment and 'Terme Fixe' and Renewable Term policies with deferred dividends maturing in the year 1918, on which the premiums shall have been paid in full to their maturity dates in 1918, and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report."

Said four several items represented the total amounts of money declared as dividends payable to plaintiff's deferred dividend policyholders whose policies matured and who were entitled to receive their deferred dividends during the calendar year 1918. The amount of them was calculated as follows:

The plaintiff's accountancy department calculated the total sum that would be payable to these four several classes on the assumption that each and all of them then living would survive the dividend date named in each policy. This total sum it found to be the sum of $14,336,947.64, but as some of these insured would probably die during the [fol. 79] months between the calculation of the total dividends and the several dates the dividend to each policyholder became payable within the year 1918, the plaintiff calculated, on the basis of the Table of Mortality used in calculating the premiums, the number of those who would probably die and the total amount payable to them, and found this sum to be the sum of $213,398. Thereupon it deducted this latter sum from the total sum that would be payable if all lived, leaving a balance of $14,123,549.64 as the total sum payable to those deferred dividend policyholders on the anniversary of their policies in 1918, who were living and whose policies were then in force.

"Item 37. Amount set apart, apportioned provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 36 ..... $107,041,778.00

The last above item described in the plaintiff's annual report as "Amount set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting appor-

tionment among deferred dividend policyholders'' is a portion of what plaintiff calls in the accountancy system used by it ''The Interim Accumulation Fund'', but the above designation contained in the plaintiff's annual report and what in its office it calls the Interim Accumulation Fund mean the same fund, namely, the amounts credited to plaintiff's deferred dividend policyholders with interest accumulations added thereto, which is carried by the plaintiff in its ''Interim Accumulation Fund'' and is held by it [fol. 80] awaiting apportionment among and payment to its deferred dividend policyholders on the several dates named in their respective policies for paying a dividend; and said sum of $107,041,778.00 consisted of all the accumulated credits to all the plaintiff's deferred dividend policyholders except the accumulated credits to the plaintiff's several deferred dividend policies on which a dividend was payable during the year 1918, (Item 36) and was the balance in said accumulated deferred dividend fund after (1) adding interest to the amount of said fund held during the year 1917, and (2) Merging therein the amount of the credits to the plaintiff's said deferred dividend policyholders in 1917, and (3) after deducting therefrom the total amount of the dividends payable in 1918 to the plaintiff's deferred dividend policyholders.

A resolution passed by the plaintiff's Board of Directors on the recommendation of the plaintiff's officers at their January 14, 1918, directors' meeting relative to said Item 37, reads as follows:

''Resolved, That the sum of $33,846,861.64 be credited to the Interim Accumulation Fund. The balance of the latter account will then be equal to $121,165,327.64, this being the Reserve to be held by the Company, as shown in Schedule D of the Actuaries' Report as to the disposition of the surplus, out of which dividends are to be appropriated to Deferred Dividend policies as the dividends periods mature.''

[fol. 81] From this total sum of $121,165,327.64 was deducted the total sum declared as dividends payable to deferred dividend policyholders during 1918 (Item 36, supra) to wit, said sum of $14,123,549.64, leaving a balance in said Interim Accumulation Fund of $107,041,778. This item is

shown on plaintiff's annual report for the year ending December 31, 1917, to the Insurance Department of the State of New York (Exhibit F page 5) as Item 37.

The Commissioner of Internal Revenue in determining the plaintiff's capital stock tax liability for the fiscal year ending, June 30, 1919, refused to allow as a deduction from the plaintiff's said admitted assets the amounts shown as said Items 35, 36 and 37, or either of them.

Seventeenth: Said Commissioner, in assessing capital stock tax for the fiscal year ending June 30, 1920, deducted from the book value of the plaintiff's "admitted assets" as of December 31, 1918, (as shown on Line 47, page 4, Exhibit G) $995,087,284.86

1. The difference between the book value and the market value of said "admitted assets"	$56,016,617.68	
2. The amount of the legal reserves as shown by items 7, 8 and 9 on page 5 of Exhibit G	762,930,020.45	
[fol. 82] 3. The total of items 10 to 34, both inclusive, and items 43, 44, 45 and 46, shown on page 5 of said Exhibit G	59,116,393.85	
4. Exemption	5,000.00	
Total deductions		$878,068,031.98
Leaving a difference of		$117,019,252.88

upon which last aforementioned sum said Commissioner levied, assessed and collected said capital stock tax of $117,019.00 for said fiscal year ending June 30, 1920.

Eighteenth: At the end of the calendar year 1918 the plaintiff had on hand, as shown by its annual report as of December 31, 1918, to the Insurance Department of the State of New York, (Exhibit G page 5) the following:

"Item 35. Dividend declared on or apportioned to annual dividend policies payable to policyholders to and including December 31, 1919, whether contingent upon the payment of renewal premiums or otherwise ..... $13,636,876.00.

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the foregoing item of $13,636,876.00 [fol. 83] which was the sum set aside for apportionment among and return to the plaintiff's annual dividend policyholders on the anniversary of their respective policies in 1919 pursuant to the terms thereof and to a resolution of the Board of Directors of the plaintiff passed at their regular meeting held on the second Wednesday in January, 1919, which was in substance and effect the same as the said resolution which is set forth in the foregoing paragraph Sixteenth, except as to dates and amounts, and appropriated said sum of $13,636,876.00 as a dividend to be distributed among and paid to the plaintiff's annual dividend policyholders on the anniversary of their insurance in 1919; the resolution of said Board of Directors being made a part hereof as Exhibit B.

"Item 36. Dividends declared on or apportioned to deferred dividend policies payable to policyholders to and including December 31, 1919 ..... $19,000,738.13.

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the above item of $19,000,738.13, said sum being the aggregate amount appropriated from plaintiff's Interim Accumulation Fund at the commencement of the year 1919 and declared as a dividend and distributed among and paid to plaintiff's deferred dividend policyholders whose several policies required plaintiff to pay such dividend during such year 1919, which said dividend was duly declared by plaintiff's Board of Directors [fol. 84] at their regular meeting held on the second Wednesday in January, 1919, by resolutions in substance and effect the same as the said resolutions which are set forth in full in said paragraph Sixteenth, said resolutions for the year 1919 differing only from said resolutions above set forth in dates and amounts, and the aggregate so de-

clared as a dividend being said sum of $19,000,738.13; said resolution of said Board of Directors being made a part hereof as Exhibit B.

"Item 37. Amount set apart, apportioned provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 36" $100,893,328.00

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the foregoing item of $100,893,328.00, said sum consisting of the accumulated credits to plaintiff's deferred dividend policyholders except the accumulated credits to plaintiff's several deferred dividend policies on which a dividend was payable during the year 1919 (Item 36), and was the balance in said accumulated deferred dividend fund after (1) adding interest to the amount of said fund held during the year 1918, and (2) merging therein the amount of the over-payment of premiums made by plaintiff's deferred dividend policyholders in 1918, and (3) after deducting therefrom the total amount of the dividends payable in 1919 to plaintiff's deferred dividend policyholders.

[fol. 85] A resolution similar to that quoted in paragraph Sixteenth, but differing in dates and amounts, was passed by plaintiff's Board of Directors at its regular meeting in January, 1919, relative to Item 37, and in pursuance thereof and after deducting the total sum declared as dividends payable to deferred dividend policyholders during 1919 (Item 36), the balance in said Interim Accumulation Fund was found to be said sum of $100,893,328. Said resolution of said Board of Directors is made part hereof as Exhibit B.

The Commissioner of Internal Revenue in determining plaintiff's capital stock tax liability for the fiscal year ending June 30, 1920, refused to allow as a deduction from plaintiff's said admitted assets the amounts shown as said Items 35, 36 and 37, or any of them.

Nineteenth: Said Commissioner, in assessing said capital stock tax paid for the fiscal year ending June 30, 1921, deducted from the book value of plaintiff's "Admitted assets" as of December 31, 1919, (as shown on Line 47, page 4, Exhibit H) $961,000,277.14

1. The difference between the book value and the market value of said "admitted assets"	$56,618,996.17	
2. The amount of the legal reserves as shown by items 7, 8 and 9 on page 5 of Exhibit H	763,528,231.62	
[fol. 86] 3. The total of items 10 to 34, both inclusive, and items 43, 44, 45 and 46, shown on page 5 of said Exhibit H	32,572,180.96	
4. Exemption	5,000.00	
Total deductions		$852,724,400.75
Leaving a difference of		$108,275,868.39

upon which last aforementioned sum said Commissioner levied, assessed and collected said capital stock tax of $108,275.00 for said fiscal year ending June 30, 1921.

Twentieth: At the end of the calendar year 1919 plaintiff had on hand, as shown by its annual report as of December 31, 1919, to the Insurance Department of the State of New York (Exhibit H, page 5) the following:

"Item 35. Dividends declared on or apportioned to annual dividend policies payable to policyholders to and including December 31, 1920, whether contingent upon the payment of renewal premiums or otherwise	$13,850,878.00

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the foregoing item of $13,850,878.00 which was the sum set aside for apportionment [fol. 87] among and return to plaintiff's annual dividend policyholders on the anniversary of their respective policies in 1920 pursuant to the terms thereof and to a resolution of the Board of Directors of plaintiff passed at their regular meeting held on the second Wednesday in Janu-

ary, 1920, which was in substance and effect the same as said resolution which is set forth in the foregoing paragraph Sixteenth, except as to dates and amounts, and apportioned said sum of $13,850,878.00 as a dividend to be paid to and distributed among plaintiff's annual dividend policyholders on the anniversary of their insurance in 1920; said resolution of said Board of Directors being made a part hereof as Exhibit C.

"Item #36. Dividends declared on or apportioned to deferred dividend policies payable to policyholders to and including December 31, 1920 ..... $18,194,897.56

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the above item of $18,194,897.56, said sum being the aggregate amount appropriated from plaintiff's Interim Accumulation Fund at the commencement of the year 1920 and declared as a dividend and distributed among and paid to plaintiff's deferred dividend policyholders whose several policies required plaintiff to pay such dividend during such year 1920, which said dividend was duly declared by plaintiff's Board of Directors at [fol. 88] their regular meeting held on the Second Wednesday in January, 1920, by resolution in substance and effect the same as said resolutions set forth in paragraph Sixteenth, differing therefrom only as to the dates and amounts and the aggregate so declared as a dividend being said sum of $18,194,897.56; said resolution of said Board of Directors being made a part hereof as Exhibit C.

"Item 37. Amount set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 36" $88,157,964.00

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the foregoing item of $88,157,964.00, said sum consisting of the accumulated credits to plaintiff's deferred dividend policyholders except the accumulated credits to plaintiff's several deferred dividend policies on which a dividend was payable during the year 1920 (Item 36), and was the balance in said accumulated de-

ferred dividend fund after (1) adding interest to the amount of said fund held during the year 1919 and (2) Merging therein the amount of the over-payments of premiums made by plaintiff's deferred dividend policyholders in 1919, and (3) after deducting therefrom the total amount of the dividend payable in 1920 to the plaintiff's deferred dividend policyholders.

A resolution relative to Item 37, similar to that quoted in paragraph Sixteenth, but differing only in the dates and amounts, was passed by the plaintiff's Board of Directors [fol. 89] at its regular meeting in January, 1920, and in pursuance thereof and after deducting the total sum declared as dividends payable to deferred dividend policyholders during 1920 (Item 36), the balance in said Interim Accumulation Fund was found to be said sum of $88,157,964. Said resolution of said Board of Directors is made part hereof as Exhibit C.

The Commissioner of Internal Revenue in determining the plaintiff's capital stock tax for the fiscal year ending June 30, 1921, refused to allow as a deduction from plaintiff's said admitted assets the amounts shown as said Items 35, 36 and 37, or either of them.

Twenty-first: Said Commissioner, in assessing said capital stock tax for the fiscal year ending June 30, 1922, deducted from the book value of plaintiff's "Admitted assets" as of December 31, 1920, (as shown on Line 47, page 4, Exhibit I) $966,718,469.38

1. The difference between the book value and the market value of said "admitted assets"	$69,640,608.87
2. The amount of the legal reserves as shown by items 7, 8 and 9 on page 5 of Exhibit I	765,780,772.59
[fol. 90] 3. The total of items 10 to 34, both inclusive, and items 43, 44, 45 and 46, shown on page 5 of said Exhibit I.....	37,157,929.77

4. Exemption	5,000.00	
Total deductions		$872,584,310.83
Leaving a difference of		$94,134,158.55

upon which last aforementioned sum said Commissioner levied, assessed and collected said capital stock tax of $94,134.00 for said fiscal year ending June 30, 1922.

Twenty-second: At the end of the calendar year 1920 the plaintiff had on hand, as shown by its annual report as of December 31, 1920, to the Insurance Department of the State of New York (Exhibit I, page 5) the following:

"Item 35. Dividends declared on or apportioned to annual dividend policies payable to policyholders to and including December 31, 1921, whether contingent upon the payment of renewal premiums or otherwise	$16,431,339.00

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the foregoing item of $16,431,339.00 [fol. 91] which was the sum set aside for apportionment among and return to the plaintiff's annual dividend policyholders on the anniversary of their respective policies in 1921 pursuant to the terms thereof and to a resolution of the Board of Directors of plaintiff passed at their regular annual meeting held on the second Wednesday in January, 1921, which was in substance and effect the same as said resolution which is set forth in the foregoing paragraph Sixteenth, except as to dates and amounts, and apportioned said sum of $16,431,339.00 as a dividend to be distributed among and paid to plaintiff's annual dividend policyholders on the anniversary of their insurance in 1921; said resolutions of the Board of Directors being made part hereof as Exhibit D.

"Item 36. Dividends declared on or apportioned to deferred dividend policies payable to policyholders to and including December 31, 1921"	$21,015,315.87

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the above item of $21,015,315.87,

said sum being the aggregate amount appropriated from the plaintiff's Interim Accumulation Fund at the commencement of the year 1921 and declared as a dividend and distributed among and paid to plaintiff's deferred dividend policyholders whose several policies required plaintiff to pay such dividend during such year 1921, which said dividend was duly declared by plaintiff's Board of Directors [fol. 92] at their regular meeting held on the second Wednesday in January, 1921, by resolutions in substance and effect the same as said resolutions above set forth in full in said paragraph Sixteenth, said resolutions for the year 1921 differing only in dates and amounts from said resolutions above set forth, and the aggregate so declared as a dividend was said sum of $21,015,315.87; said resolutions of said Board of Directors being made part hereof as Exhibit D.

"Item 37. Amount set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 36 ..... $76,176,646.00

The facts stated in the foregoing paragraph Sixteenth are true of and apply to the foregoing item of $76,176,646.00, said sum consisting of the accumulated credits to plaintiff's deferred dividend policyholders except the accumulated credits to plaintiff's several deferred dividend policies on which a dividend was payable during the year 1921, (Item 36), and was the balance in said accumulated deferred dividend fund after (1) adding interest to the amount of said fund held during the year 1920, and (2) merging therein the amount of the over-payment of premiums made by plaintiff's deferred dividend policyholders in 1921, and (3) after deducting therefrom the total amount of the dividend payable in 1921 to plaintiff's deferred dividend policyholders.

[fol. 93] A resolution relative to Item 37, similar to that quoted in paragraph Sixteenth, but differing only in dates and amounts, was passed by plaintiff's Board of Directors at its regular meeting in January, 1921, and in pursuance thereof and after deducting the total sum declared as dividends payable to deferred dividend policyholders during

1921 (Item 36), the balance in said Interim Accumulation Fund was found to be said sum of $76,176,646. Said resolution of said Board of Directors is made part hereof as Exhibit D.

The Commissioner of Internal Revenue in determining the plaintiff's capital stock tax liability for the fiscal year ending June 30, 1922, refused to allow as a deduction from plaintiff's said admitted assets the amounts shown as said Items 35, 36 and 37, or either of them.

Twenty-third: More than ninety per cent. of plaintiff's deferred dividend policies required the payment of the policy's shares of the accumulated credits from year to year on the anniversary of the insurance twenty years after the policy took effect. In the year 1906 the plaintiff discontinued making deferred dividend contracts and thereafter made only policies which required an annual settlement with its policyholders. The result is that its Interim Accumulation Fund has now all been paid out. The balance in said Interim Accumulation Fund after, as hereinbefore indicated, (1) adding interest to the amount of said fund held during the year, (2) merging therein the amount of the credits to plaintiff's deferred dividend policyholders [fol. 94] the preceding year, and (3) after deducting therefrom the total amount of dividends declared, was as follows:

December 31, 1921	$59,303,179.00
December 31, 1922	39,310,473.00
December 31, 1923	20,352,917.00
December 31, 1924	7,108,161.00

Twenty-fourth: The plaintiff's income tax return for the calendar year 1917 was made on the cash receipts and disbursements basis and said return was accepted and plaintiff's income tax computed on said basis by said Commissioner of Internal Revenue, and in computing plaintiff's income tax for said calendar year 1917 the amounts represented by Items 35, 36 and 37 as shown in plaintiff's annual report at December 31, 1917 (Exhibit F, page 5) were not excluded from plaintiff's gross income for 1917 as portions of actual premiums received from individual policyholders which were paid back or credited to or treated as an abatement of premiums of such policyholders within

the taxable year 1917. Nor were the amounts represented by said Items 35, 36 and 37 otherwise deducted from plaintiff's gross or net income in said Calendar year 1917, and the amount of the surplus earned by plaintiff for said calendar year 1917 which was divided among the annual dividend and deferred dividend policyholders as groups was included in plaintiff's net income and taxed for income tax purposes for the year 1917.

In the plaintiff's income tax return for the calendar year 1917, Item 35 and four per cent. of Item 36 as shown in [fol. 95] plaintiff's annual report as of December 31, 1916 (Exhibit E, p. 5) were excluded from the plaintiff's gross income of 1917 as portions of actual premiums received from individual policyholders which were paid back or credited to or treated as an abatement of premium of such individual policyholders within the year 1917. The amount of these items which were paid back or credited to policyholders in 1917 were not included by the Commissioner in assessing the capital stock tax for the fiscal year beginning July 1, 1918, and ending June 30, 1919, but in assessing said tax the Commissioner used the corresponding items as shown in plaintiff's annual report at December 31, 1917 (Exhibit F, page 5.)

Item 37 was not excluded from gross income in any year in any tax return. What was true of these items for the years stated in this paragraph was similarly true for the corresponding items in each year in question; similarly all income tax returns were made and accepted upon a cash receipts and disbursements basis.

Twenty-fifth: Plaintiff's assets are in nowise segregated or in any way ear-marked for investment purposes. The plaintiff did not separately invest the sum credited to its deferred dividend policyholders as shown by Item 37. It does not separately invest any sums held by it. All sums received by it the plaintiff invests generally and when, as in Item 37, a specific sum is held to the credit of a group, or where a sum is held to the credit of a single individual, it [fol. 96] each year at the annual account increases the sum so held with interest at the average rate earned during the preceding year on all its invested funds. The above

statement relative to Item 37 is correspondingly true of Items 35 and 36.

New York Life Insurance Company, by James H. McIntosh, its Attorney. Frank K. Bowers, Collector, &c., by Charles H. Tuttle.

[fol. 97] EXHIBIT A

CITY AND COUNTY OF NEW YORK,
State of New York,
United States of America, ss:

I certify that in the Minute Book of the Board of Directors of the New York Life Insurance Company it is recorded that at a stated meeting of said Board, held at the Home Office of said Company, 346 and 348 Broadway, New York, on 14th January, 1918, a quorum being present and acting, the President of said Company submitted the following Report; and that the Resolutions recommended therein were unanimously adopted, to wit:

"New York, January 10, 1918.

To the Board of Directors of the New York Life Insurance Company:

GENTLEMEN: The Officers of the New York Life Insurance Company hereby report that, pursuant to Article VIII of the charter of the New York Life Insurance Company, they have caused a statement to be made of the true state of the affairs of said Company for the year 1917, and have thereby ascertained that the true state of the affairs of said Company for the year is as stated in the President's Annual Report for said year.

Said Officers have caused a calculation to be made of the surplus of said Company for the year ending December 31, 1917, and now here report that the surplus of said Com-
[fol. 98] pany for the year ending December 31, 1917, is the sum of $30,518,736.47.

Said Officers recommended to the Board of Directors the adoption of the following two resolutions transferring funds from the Security Fluctuation and General Contingency Fund:

Resolved, That the sum of $375,198.00 be credited to the Annual Dividend Equalization Fund.

Resolved, That the sum of $32,279.00 be credited to the Contribution Dividend Equalization Fund.

Said Officers further recommend the adoption of the following resolution, to wit:

Resolved, That the sum of $28,215,108.08 be transferred from the Latent Fund for Contingencies and Dividends to the Undivided Surplus Account. The balance of the former account will then be equal to $2,459,945.94, being the excess of the entire assets of the Company upon the basis of book values over the entire assets of the Company upon the basis of market values.

Said Officers further recommend the adoption of the following two resolutions, setting aside from the Undivided Surplus the sum of $46,296,330.55, to wit:

Resolved, That the sum of $33,846,861.64 be credited to the Interim Accumulation Fund. The balance of the latter account will then be equal to $121,165,327.64, this being the [fol. 99] Reserve to be held by the Company, as shown in Schedule D of the Actuaries' Report as to the disposition of the surplus, out of which dividends are to be appropriated to Deferred Dividend policies as the dividend periods mature.

Resolved, That the sum of $12,449,468.91 be credited to the Security Fluctuation and General Contingency Fund.

Said Officers further recommend to the Board of Directors the adoption of the following resolution, to wit:

Resolved, That the remainder of the Surplus, being the amount of $12,437,514.00 be appropriated from the Undivided Surplus Account, out of which shall be paid to those policies which participate annually in Surplus on their anniversaries in 1918, a dividend as shown in Schedule A of the Actuaries' Report, including an extra dividend to the Contribution Annual Dividend policies issued in 1908 and 1913, as shown in said Schedule A; and that inasmuch as no surplus has been earned upon the Contribution Annual Dividend policies issued in the year 1917, and dating from that year, no dividend be appropriated to such policies nor paid to them in the year 1918.

Said Officers further recommend the adoption of the following four several resolutions, for the purpose of dividend appropriations and apportionments from the Interim Accumulation Fund, to wit:

[fol. 100] Resolved, That the sum of $293,448.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all policies with 5-Year Period dividends issued in the years 1888, 1893, 1898 and 1903, respectively, on which the premiums shall have been paid in full to their anniversaries in 1918, and which shall be in force at such anniversaries, a dividend as shown in Schedule B of the Actuaries' Report.

Resolved, That the further sum of $13,793,459.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all Accumulation policies, on which the premiums shall have been paid in full to the dates of maturity of their respective Accumulation periods in 1918, and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report.

Resolved, That the further sum of $25,087.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all 7-Year Equalization policies issued in the year 1904, on which the premiums shall have been paid in full to their anniversaries in 1918, and which shall be in force at such anniversaries, a dividend as shown in Schedule C of the Actuaries' Report.

Resolved, That the further sum of $11,555.64 be appropriated from the Interim Accumulation Fund, out of which shall be paid to Children's Endowments and "Terme Fixe" and Renewable Term policies with deferred dividends maturing in the year 1918, on which the premius shall have [fol. 101] been paid in full to their maturity dates in 1918, and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report.

Said Officers recommend the adoption of the following resolution:

Resolved, That during 1918 the Company credit interest on funds held by it on deposit arising from matured life insurance contracts, and on cash dividends, which were left with the Company to accumulate at interest, at the rate of four per cent instead of a less rate.

Said Officers hereby submit to the Board of Directors the Report of the Actuaries embodying the foregoing recommendations and therewith the several Schedules A, B, C and D therein referred to."

Respectfully submitted, D. P. Kingsley, President.

Attested:

Seymour M. Ballard, Secretary.

Witness my hand and the seal of said Company, this — day of ——.

——, Secretary.

[fol. 102] City and County of New York,
State of New York, ss:

Before me, the undersigned authority, personally came Seymour M. Ballard, Secretary of the New York Life Insurance Company, who, being by me duly sworn, to me acknowledged that the seal affixed to the above instrument was the corporate seal of said Company, and that it was so affixed and his name signed thereto for the purpose of certification by virtue of his official position.

Witness my hand and official seal at New York this

Exhibit B

City and County of New York,
State of New York,
United States of America, ss:

I certify that in the Minute Book of the Board of Directors of the New York Life Insurance Company it is recorded that at a stated meeting of said Board, held at the Home Office of said Company, 346 and 348 Broadway, New York, on the 13th February, 1919, a quorum being present and acting, the President of said Company submitted the following Report; and that the Resolutions recommended therein were unanimously adopted, to wit:

[fol. 103] New York, January 29, 1919.

To the Board of Directors of the New York Life Insurance Company:

GENTLEMEN: The Officers of the New York Life Insurance Company hereby report that, pursuant to Article VIII of the charter of the New York Life Insurance Company, they have caused a statement to be made of the true state of the affairs of said Company for the year 1918, and have thereby ascertained that the true state of the affairs of said Company for the year is as stated in the President's Annual Report for said year.

Said Officers have caused a calculation to be made of the surplus of said Company for the year ending December 31, 1918, and now here report that the surplus of said Company for the year ending December 31, 1918, is the sum of $23,969,689.85.

Said Officers further report that pursuant to Preambles and Resolutions adopted by the Board at its stated meeting on January 8, 1919, and in pursuance of the authority therein granted, the Officers have signed, verified, printed and filed in several of the Insurance Departments of the United States the annual statement for the year ending December 31, 1918, and as a necessary incident to such action have made disposition of the surplus in accordance with the following resolutions which said Officers now ask the Board of Directors to approve and confirm.

[fol. 104] Said Officers recommend to the Board of Directors the adoption of the following three resolutions transferring funds:

Resolved, That the sum of $67,298.00 be transferred from the Security Fluctuation and General Contingency Fund to the Annual Dividend Equalization Fund.

Resolved, That the sum of $47,150.00 be transferred from the Contribution Dividend Equalization Fund to the Security Fluctuation and General Contingency Fund.

Resolved, That the sum of $1,804,275.93 be transferred from the Security Fluctuation and General Contingency Fund to the Undivided Surplus Account.

Said Officers further recommend the adoption of the following resolution, to wit:

Resolved, That the sum of $715,198.35 be transferred from the Latent Fund for Contingencies and Dividends to the Undivided Surplus Account. The balance of the former account will then be equal to $1,744,747.59, being the excess of book values over market values on Stocks and Bonds not subject to amortization.

Said Officers further recommend the adoption of the following resolution, setting aside from the Undivided Surplus the sum of $26,489,164.13, to wit:

Resolved, That the sum of $12,852,288.13 be credited to the Interim Accumulation Fund. The balance of the lat-
[fol. 105] ter account will then be equal to $119,894,066.13, this being the Reserve to be held by the Company, as shown in Schedule D of the Actuaries' Report as to the disposition of the surplus, out of which dividends are to be appropriated to deferred dividend policies as the dividend periods mature.

Said Officers further recommend to the Board of Directors the adoption of the following resolution, to wit:

Resolved, That the remainder of the Surplus, being the amount of $13,636,876.00 be appropriated from the Undivided Surplus Account, out of which shall be paid to those policies which participate annually in Surplus on their anniversaries in 1919, a dividend as shown in Schedule A of the Actuaries' Report, including an extra dividend to the Contribution Annual Dividend policies issued in 1909 and 1914, as shown in said Schedule A; and that inasmuch as no surplus has been earned upon the Contribution Annual Dividend policies issued in the year 1918, and dating from that year, no dividend be appropriated to such policies nor paid to them in the year 1919.

Said Officers further recommend the adoption of the following four several resolutions, for the purpose of dividend appropriations and apportionments from the Interim Accumulation Fund, to wit:

Resolved, That the sum of $282,138.00 be appropriated from the Interim Accumulation Fund, out of which shall [fol. 106] be paid to all policies with 5-year Period dividends issued in the years 1889, 1894, 1899 and 1904, respectively, on which the premiums shall have been paid in full to their anniversaries in 1919, and which shall be in force at such anniversaries, a dividend as shown in Schedule B of the Actuaries' Report.

Resolved, That the further sum of $18,646,019.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all Accumulation policies, on which the premiums shall have been paid in full to the dates of maturity of their respective Accumulation periods in 1919, and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report.

Resolved, That the further sum of $60,269.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all 7-year Equalization policies issued in the year 1905, on which the premiums shall have been paid in full to their anniversaries in 1919, and which shall be in force at such anniversaries, a dividend as shown in Schedule C of the Actuaries' Report.

Resolved, That the further sum of $12,312.13 be appropriated from the Interim Accumulation Fund, out of which shall be paid to Children's Endowments and "Terme Fixe" and Renewable Term policies with deferred dividends maturing in the year 1919, on which the premiums shall have been paid in full to their maturity dates in 1919, and which shall be in force at such dates, a dividend as shown in [fol. 107] Schedule C of the Actuaries' Report.

Said Officers recommend the adoption of the following resolution:

Resolved, that during 1919 the Company credit interest on funds held by it on deposit arising from matured life insurance contracts, and on cash dividends which were left with the Company to accumulate at interest, at the rate of four per cent instead of a less rate.

Said Officers hereby submit to the Board of Directors the Report of the Actuaries embodying the foregoing recom-

mendations and therewith the several Schedules A, B, C and D therein referred to.

Respectfully submitted, D. P. Kingsley, President.

Attested:

Seymour M. Ballard, Secretary.

Witness my hand and the seal of said Company this — day of ——.

City and County of New York,
State of New York, ss:

Before me, the undersigned authority, personally came Seymour M. Ballard, Secretary of the New York Life In- [fol. 108] surance Company, who, being by me duly sworn, to me acknowledged that the seal affixed to the above instrument was the corporate seal of said Company, and that it was so affixed and his name signed thereto for the purpose of certification by virtue of his official position.

Witness my hand and official seal at New York this

Exhibit C to Bill of Exceptions

City and County of New York,
State of New York,
United States of America, ss:

I certify that in the Minute Book of the Board of Directors of the New York Life Insurance Company it is recorded that at a stated meeting of said Board, held at the Home Office of said Company, 346 and 348 Broadway, New York, on 11th February, 1920, a quorum being present and acting, the President of said Company submitted the following Report; and that the Resolutions recommended therein were unanimously adopted, to wit:

New York, February 4, 1920.

To the Board of Directors of the New York Life Insurance Company:

Gentlemen: The Officers of the New York Life Insurance Company hereby report that, pursuant to Article VIII of

[fol. 109] the charter of the New York Life Insurance Company, they have caused a statement to be made of the true state of the affairs of said Company for the year 1919, and have thereby ascertained that the true state of the affairs of said Company for the year is as stated in the President's Annual Report for said year.

Said Officers have caused a calculation to be made of the surplus of said Company for the year ending December 31, 1919, and now here report that the surplus of said Company for the year ending December 31, 1919, is the sum of $24,070,239.89.

Said Officers further report that pursuant to Preambles and Resolutions adopted by the Board at its stated meeting on January 14, 1920, and in pursuance of the authority therein granted, the Officers have signed, verified, printed and filed in several of the Insurance Departments of the United States the annual statement for the year ending December 31, 1919, and as a necessary incident to such action have made disposition of the surplus in accordance with the following resolutions which said Officers now ask the Board of Directors to approve and confirm.

Said Officers recommend to the Board of Directors the adoption of the following two resolutions transferring funds:

Resolved, That the sum of $192,829.00 be transferred from the Annual Dividend Equalization Fund to the Security Fluctuation and General Contingency Fund.

Resolved, That the sum of $147,611.00 be transferred from the Security Fluctuation and General Contingency [fol. 110] Fund to the Contribution Dividend Equalization Fund.

Said Officers further recommend the adoption of the following resolution, to wit:

Resolved, That the sum of $358,211.15 be transferred from the Latent Fund for Contingencies and Dividends to the Undivided Surplus Account. The balance of the former account will then be equal to $1,386,536.44, being the excess of book values over market values on Stocks and Bonds not subject to amortization.

Said Officers further recommend the adoption of the following two resolutions, setting aside from the Undivided Surplus the sum of $10,577,573.04, to wit:

Resolved, That the sum of $5,459,533.56 be credited to the Interim Accumulation Fund. The balance of the latter account will then be equal to $106,352,861.56, this being the Reserve to be held by the Company, as shown in Schedule D of the Actuaries' Report as to the disposition of the surplus, out of which dividends are to be appropriated to Deferred Dividend policies as the dividends periods mature.

Resolved, That the sum of $5,118,039.48 be credited to the Security Fluctuation and General Contingency Fund.

Said Officers further recommend to the Board of Directors the adoption of the following resolution, to wit:

Resolved, That the remainder of the Surplus, being the amount of $13,850,878.00 be appropriated from the Undi- [fol. 111] vided Surplus Account, out of which shall be paid to those policies which participate annually in Surplus on their anniversaries in 1920, a dividend as shown in Schedule A of the Actuaries' Report, including an extra dividend to the Contribution Annual Dividend policies issued in 1910 and 1915, as shown in said Schedule A; and that inasmuch as no surplus has been earned upon the Contribution Annual Dividend policies issued in the year 1919, and dating from that year, no dividend be appropriated to such policies nor paid to them in the year 1920.

Said Officers further recommend the adoption of the following four several resolutions, for the purpose of dividend appropriations and apportionments from the Interim Accumulation Fund, to wit:

Resolved, That the sum of $295,000.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all policies with 5-Year Period dividends issued in the years 1885, 1890, 1895, 1900 and 1905, respectively, on which the premiums shall have been paid in full to their anniversaries in 1920, and which shall be in force at such anniversaries, a dividend as shown in Schedule B of the Actuaries' Report.

Resolved, That the further sum of $17,757,676.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all Accumulation policies, on which the premiums shall have been paid in full to the dates of maturity of their respective Accumulation periods in 1920, [fol. 112] and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report.

Resolved, That the further sum of $138,490.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all 7-Year Equalization policies issued in the year 1906, on which the premiums shall have been paid in full to their anniversatries in 1920, and which shall be in force at such anniversaries, a dividend as shown in Schedule C of the Actuaries' Report.

Resolved, That the further sum of $3,731.56 be appropriated from the Interim Accumulation Fund, out of which shall be paid to Children's Endowments and "Terme Fixe" and Renewable Term policies with deferred dividends maturing in the year 1920, on which the premiums shall have been paid in full to their maturity dates in 1920, and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report.

Said Officers recommend the adoption of the following resolution:

Resolved, That during 1920 the Company credit interest on funds held by it on deposit arising from matured life insurance contracts, and on cash dividends, which were left with the Company to accumulate at interest, at the rate of four per cent. instead of a less rate.

Said Officers hereby submit to the Board of Directors the Report of the Actuaries embodying the foregoing recommendations and therewith the several Schedules A, B, C [fol. 113] and D therein referred to.

Respectfully submitted, D. P. Kingsley, President.

Attested:

Seymour M. Ballard, Secretary.

Witness my hand and the seal of said Company this — day of ——.

——, Secretary.

CITY AND COUNTY OF NEW YORK,
State of New York, ss:

Before me, the undersigned authority, personally came Seymour M. Ballard, Secretary of the New York Life Insurance Company, who, being by me duly sworn, to me acknowledged that the seal affixed to the above instrument was the corporate seal of said Company, and that it was so affixed and his name signed thereto for the purpose of certification by virtue of his official position.

Witness my hand and official seal at New York this ——.

[fol. 114] EXHIBIT D.

CITY AND COUNTY OF NEW YORK,
State of New York,
United States of America, ss:

I certify that in the Minute Book of the Board of Directors of the New York Life Insurance Company it is recorded that at a stated meeting of said Board, held at the Home Office of said Company, 346 and 348 Broadway, New York, on 9th February, 1921, a quorum being present and acting, the President of said Company submitted the following Report; and that the Resolutions recommended therein were unanimously adopted to wit:

New York, February 9, 1921.

To the Board of Directors of the New York Life Insurance Company:

GENTLEMEN: The Officers of the New York Life Insurance Company hereby report that, pursuant to Article VII of the charter of the New York Life Insurance Company; they have caused a statement to be made of the true state of the affairs of said Company for the year 1920 and have thereby ascertained that the true state of the affairs of said Company for the year is as stated in the President's Annual Report for said year.

Said Officers have caused a calculation to be made of the surplus of said Company for the year 1920 and have there-

by ascertained that the true state of the affairs of said [fol. 115] Company for the year is as stated in the President's Annual Report for said year.

Said Officers have caused a calculation to be made of the surplus of said Company for the year, ending December 31, 1920, and now here report that the surplus of said Company for the year ending December 31, 1920, is the sum of $29,960,551.54.

Said Officers further report that pursuant to Preambles and Resolutions adopted by the Board at its stated meeting on January 12, 1921, and in pursuance of the authority therein granted, the Officers have signed, verified, printed and filed in several of the Insurance Departments of the United States the annual statement for the year ending December 31, 1920, and as a necessary incident to such action have made disposition of the surplus in accordance with the following resolutions which said Officers now ask the Board of Directors to approve and confirm.

Said Officers recommend to the Board of Directors the adoption of the following two resolutions transferring funds:

Resolved, That the sum of $459,194.00 be transferred from the Annual Dividend Equalization Fund to the Security Fluctuation and General Contingency Fund.

Resolved, That the sum of $24,804.00 be transferred from the Security Fluctuation and General Contingency Fund to the Contribution Dividend Equalization Fund.

[fol. 116] Said Officers further recommend the adoption of the following resolution, to wit:

Resolved, That the sum of $839,211.38 be transferred from the Latent Fund for Contingencies and Dividends to the Undivided Surplus Account. The balance of the former account will then be equal to $547,325.06.

Said Officers further recommend the adoption of the following two resolutions, setting aside from the Undivided Surplus the sum of $14,368,423.92, to wit:

Resolved, That the sum of $9,033,997.87 be credited to the Interim Accumulation Fund. The balance of the latter account will then be equal to $97,191,961.87, this being the

Reserve to be held by the Company, as shown in Schedule D of the Actuaries' Report as to the disposition of the surplus, out of which dividends are to be appropriated to Deferred Dividend policies as the dividend periods mature.

Resolved, That the sum of $5,334,426.05 be credited to the Security Fluctuation and General Contingency Fund.

Said Officers further recommend to the Board of Directors the adoption of the following resolution, to wit:

Resolved, That the remainder of the Surplus, being the amount of $16,431,339.00, be appropriated from the Undivided Surplus Account, out of which shall be paid to those policies which participate annually in Surplus on their an-
[fol. 117] niversaries in 1921, a dividend as shown in Schedule A of the Actuaries' Report, including an extra dividend to the Contribution Annual Dividend policies issued in 1906, 1911 and 1916, as shown in said Schedule A; and that inasmuch as no surplus has been earned upon the Contribution Annual Dividend policies issued in the year 1920, and dating from that year, no dividend be appropriated to such policies nor paid to them in the year 1921.

Said Officers further recommend the adoption of the following four several resolutions, for the purpose of dividend appropriations and apportionments from the Interim Accumulation Fund, to wit:

Resolved, That the sum of $270,626.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all policies with 5-Year Period dividends issued in the years 1886, 1891, 1896, 1901 and 1906, respectively, on which the premiums shall have been paid in full to their anniversaries in 1921, and which shall be in force at such anniversaries, a dividend as shown in Schedule B of the Actuaries Report.

Resolved, That the further sum of $20,682,242.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all Accumulation policies, on which the premiums shall have been paid in full to the dates of maturity of their respective Accumulation periods in 1921, and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report.

[fol. 118] Resolved, That the further sum of $56,159.00 be appropriated from the Interim Accumulation Fund, out of which shall be paid to all 7-Year Equalization policies issued in the year 1900, on which the premiums shall have been paid in full to their anniversaries in 1921, and which shall be in force at such anniversaries, a dividend as shown in Schedule C of the Actuaries' Report.

Resolved, That the further sum of $6,288.87 be appropriated from the Interim Accumulation Fund, out of which shall be paid to Children's Endowments, "Terme Fixe," Renewable Term policies, and 5% X Bonds, with deferred dividends maturing in the year 1921, on which the premiums shall have been paid in full to their maturity dates in 1921, and which shall be in force at such dates, a dividend as shown in Schedule C of the Actuaries' Report.

Said Officers recommend the adoption of the following resolution:

Resolved, That during 1921 the Company credit interest on funds held by it on deposit arising from matured life insurance contracts, and on cash dividends, which were left with the Company to accumulate at interest, at the rate of four per cent. instead of a less rate.

Said Officers hereby submit to the Board of Directors the Report of the Actuaries embodying the foregoing recommendations and therewith the several Schedules A, B, C and D therein referred to.

Respectfully submitted. D. P. Kingsley, President.

[fol. 119] Attested:
Seymour M. Ballard, Secretary.

Witness my hand and the seal of said Company this — day of ——.

—— ——, Secretary.

City and County of New York,
State of New York, ss:

Before me, the undersigned authority, personally came Seymour M. Ballard, Secretary of the New York Life Insurance Company, who, being by me duly sworn, to me acknowledged that the seal affixed to the above instrument

was the corporate seal of said Company, and that it was so affixed and his name signed thereto for the purpose of certification by virtue of his official position.

Witness my hand and official seal of New York this ——.

[fol. 120]

EXHIBIT E

Annual Statement of the New-York Life Insurance Company

I.—Capital Stock

1.	Amount of Capital paid up in cash	$ 0	
2.	Amount of ledger Assets (as per balance), December 31, of previous year	$837,676,332.88	
3.	—crease of Capital during the year	0	
4.	Extended at.		$837,676,332.88

II.—Income

5.	First year's premiums on original policies without deduction for commissions or other expenses, less $ 0 for first year's reinsurance	$10,119,400.43	
6.	Surrender values applied to pay first year's premiums	0	
7.	Total first year's premiums on original policies	$10,119.400.43	
8.	Dividends applied to purchase paid-up additions and annuities	2,288,613.14	

77

EXHIBIT E—Continued

9.	Surrender values applied to purchase paid-up insurance and annuities	0	
10.	Consideration for original annuities involving life contingencies	430,636.68	
11.	Consideration for supplementary contracts involving life contingencies	356,058.21	
12.	Total new premiums		13,194,708.46
13.	Renewal premiums (in addition to items 14, 16 and 17) without deduction for commissions or other expenses, less $70,117.89 for reinsurance on renewals [including $22,477.50 premiums waived for total and permanent disability]	75,781,481.53	
14.	Dividends applied to pay renewal premiums	6,578,910.44	
15.	Dividends applied to shorten the endowment or premium paying period	0	
16.	Surrender values applied to pay renewal premiums	153,640.53	
17.	Renewal premiums for deferred annuities	83,678.64	
18.	Total renewal premiums		82,597,711.14
19.	Extra premiums for total and permanent disability benefits [first year premiums, $113,-		

	207.00; Renewal premiums $244,447.00] $357,654.00; and for additional accidental death benefits [first year premiums $8,890,00; renewal premiums $857.00] $9,747.00 included in life policies		367,401.00
20.	Total premium income		96,159,820.60
21.	(A) Consideration for supplementary contracts not involving life contingencies		1,532,847.25
22.	Dividends left with the Company to accumulate interest (including surrender values of reversionary additions left on deposit $142,390.32)		680,792.37
23.	Ledger assets, other than premiums received from other companies for assuming their risks		0
24.	Gross interest on mortgage loans, per Schedule B, less $182,496.64 accrued interest on mortgages acquired during 1916	7,825,743.66	
25.	Gross interest on collateral loans, per Schedule C	8,250.00	
26.	Gross interest on bonds and dividends on stocks, less $426,447.73, accrued interest on bonds acquired during 1916, per Schedule D	20,948,990.45	
27.	Gross interest on premium notes, policy loans or liens	7,875,118.07	

Exhibit E—Continued

28.	Gross interest on deposit in trust companies and banks, per Schedule E.	512,881.94	
29.	Gross interest on other debts due the Company (give items and amounts):		
30.	. . . . .		
31.	. . . . .		
32.	Gross discount on claims paid in advance.	17,871.32	
33.	Gross rent from Company's property, including $307,693.60 for Company's occupancy of its own buildings, per Shecdule A	919,912.72	
34.	Total gross interest and rents		38,108,768.16
35.	From other sources (give items and amounts):		
36.	Commissions advanced in previous years now repaid $20,350.68; Policy Fees $4,171.02; Exchange, $768,814.13; Doubtful debts recovered $1,894.50; Bonuses received for prepayment or extension of Mortgage Loans $7,856.39; Income Tax deducted at Source $189.96		803,276.68
37.	Deposits received in guarantee of purchase of Real Estate and of Rents		219,055.00
38.	. . . . .		

39.				
40.	From Agents' balances previously charged off		0	
41.	Borrowed money (gross)*		0	
42.	Gross profit on sale or maturity of ledger assets, viz:			
	(a) Real estate, per Schedule A	100,000.00		
	(b) Bonds, per Schedule D	954,835.73		
	(c) Stocks, per Schedule D	0		
			1,054,835.73	
43.	Gross increase, by adjustment, in book value of ledger assets, viz:			
	(a) Real estate, Per Schedule A	39,342.44		
	(b) Bonds, per Schedule D (including $345,940.08 for accrual of discount)	401,857.14		
	(c) Stocks, per Schedule D	0		
	(d) Bond and Mortgage	7,737.79		
			448,937.37	
44.	Total Income			$139,008,333.16
45.	Amount carried forward			$976,684,666.04

(A) Including commuted value of instalments or other benefits not payable at the time of death or maturity of endowments, such commuted value being entered also under No. 1 or 2 of Disbursements.

*Company is at liberty to briefly state transaction, so that explanation can be carried as a footnote in Department report.

EXHIBIT E—Continued

[fol. 121]

Amount brought forward			$976,684,666.04

III.—Disbursements

1. (A) For death claims (less $36,940.81 reinsurance), $28,455,992.42; additions, $876,353.90		$29,332,346.32	
2. (A) For matured endowments (less $ 0 reinsurance), $11,348,472.88; additions, $35,951.81		11,384,424.69	
3. (a) For total and permanent disability:			
Premiums waived during the year	22,477.50		
Payments made to policy-holders during the year	15,019.50		
		37,497.00	$40,754,268.01
(b) For additional accidental death benefits		0	
4. Net amount paid for losses and matured endowments			
5. For annuities involving life contingencies			1,414,154.02
6. Premium notes and liens voided by lapse, less $ 0 restorations			0
7. Surrender values paid in cash or applied in liquidation of loans or notes			19,397,720.47
8. Surrender values applied to pay new premiums (see Income No. 6), $ 0 ; to pay renewal premiums (see Income No. 16), $153,640.53			153,640.53

9.	Surrender values applied to purchase paid-up insurance and annuities (see Income No. 9)	0
10.	Dividends paid to policy-holders in cash or applied in liquidation of loans or notes	10,289,429.70
11.	Dividends applied to pay renewal premiums (see Income No. 14)	6,578,910.44
12.	Dividends applied to shorten the endowment or premium paying period (see Income No. 15)	0
13.	Dividends applied to purchase paid-up additions and annuities (see Income No. 8)	2,288,613.14
14.	Dividends left with the Company to accumulate at interest (see Income No. 22)	538,402.05
15.	(Total paid policy-holders ..... $81,415,138.36)	
16.	Expense of investigation and settlement of policy claims, including $34,034.22 for legal expense	39,956.81
17.	Paid for claims on supplementary contracts not involving life contingencies	686,023.33
18.	Dividends and interest thereon held on deposit surrendered during the year	91,102.30
19.	Paid stockholders for interest or dividends	0
20.	Commissions to agents (less commission on reinsurance): First year's premiums, $4,767,242.19; renewal premiums, $1,975,933.57; annuities (original), $16,580.39; (renewal), $1,017.46	6,760,773.61
21.	Commuted renewal commissions	0
22.	Compensation of managers and agents not paid by commission for services in obtaining new insurance	26,043.36

Exhibit E—Continued

23.	Agency supervision and traveling expenses of supervisors (except compensation for Home Office supervision)		954,397.34
24.	Branch Office expenses, including salaries of managers and clerks not included in item 22		1,087,324.49
25.	Medical examiners' fees, $423,954.43; inspection of risks, $106,350.10		530,304.53
26.	Salaries and all other compensation of officers, directors, trustees, and Home Office employees		1,992,827.47
27.	Rent, including $307,693.60 for Company's occupancy of its own buildings, less $2,084.18 received under sublease		600,119.59
28.	Advertising, $44,435.86; printing and stationery, $268,081.60; postage, telegraph, telephone and express, $248,926.91; exchange, $ 0		561,444.37
29.	Legal expense not included in item 16		21,798.25
30.	Furniture, fixtures and safes		92,600.50
31.	Repairs and expenses (other than taxes) on real estate		290,074.62
32.	Taxes on real estate		202,991.14
33.	State taxes on premiums		968,073.02
34.	Insurance Department licenses and fees		25,569.30
35.	All other licenses, fees and taxes (give items and amounts):		
36.	Federal Corporation tax	$113,338.82	
37.	Local licenses and taxes, $51,945.55; tax on policy reserves, $60,822.00	112,767.55	

38.	Miscellaneous taxes (including $56,767.03 tax on interest receipts)	90,612.26	
			316,718.63
39.	Other disbursements (give items and amounts):		
40.	Paid agents under Nylic contracts	839,273.97	
41.	Doubtful debts marked off $8,144.81; Fire Losses, $10,947.88; Settlement of Judgment, $2,479.70; Remittances not yet adjusted, $4,100.53	25,672.92	
42.	Books, Papers and Subscriptions, $13,905.83; Special Inspection Reports, $6,138.66; Lunch for Company's employees, $93,137.14; Miscellaneous Items of Expense, $11,953.01; Legislative and Departmental Expenses, $5,985.17; Expenses Directors' Election, 1917, $1,459.91; Traveling Expenses, $15,500.60; Examination and Audits of the Company's accounts, $3,808.08	151,888.40	
43.	Miscellaneous Interest Payments, $15,557.34; Bank Charges, $8,347.57; Custody of and Insurance on Securities, $25,756.93; Premiums on Fidelity Bonds, $6,978.64; Real Estate Commissions and Fees, $5,500.00; Real Estate and Mortgage Department Expenses, $12,721.65	74,862.13	
			1,091,697.42

EXHIBIT E—Continued

44.	Agents' balance charged off		0	
45.	Borrowed money repair (gross)		0	
46.	Interest on borrowed money		0	
47.	Gross loss on sale or maturity of ledger assets, viz.:			
	(a) Real Estate, per Schedule A	0		
	(b) Bonds, per Schedule D	786,142.97		
	(c) Stocks, per Schedule D	0		
			786,142.97	
48.	Gross decrease, by adjustment, in book value of ledger assets, viz.:			
	(a) Real Estate, per Schedule A	907,440.04		
	(b) Bonds per Schedule D (including $296,259.44 for amortization of premiums)	2,144,388.17		
	(c) Stocks, per Schedule D	0		
	(d) Bond and Mortgage	373.33		
			3,052,201.54	
49.	Total Disbursements			$101,593,322.95
50.	Balance			$875,091,343.09

(A) Including commuted value of supplementary contracts—see No. 21 of Income.

IV.—Ledger Assets

1.	Book value of Real Estate (less $ 0 incumbrances), per Schedule A		$11,257,500.00
2.	Mortgage Loans on Real Estate, per Schedule B, first liens, $164,579,647.67; other than first liens, $ 0		164,579,647.67
3.	Loans secured by pledge of bonds, stocks or other collateral per Schedule C		0
4.	Loans made to policy-holders on this Company's policies assigned as collateral		156,431,663.33
5.	Premium Notes on policies in force, of which $ 0 is for first year's premiums		4,891,596.78
6.	Book value of bonds, $521,677,348.13 and stocks, $294,671.88, per Schedule D		521,972,020.01
7.	Cash in Company's office	$3,402.82	
8.	Deposits in trust companies and banks not on interest, per Schedule E	1,530,682.56	
9.	Deposits in trust companies and banks, on interest, per Schedule E	13,958,395.96	15,492,481.34
10.	Bills receivable, $544.50; agents' balance (debit, $ 0, credit, $ 0); net $ 0 Branch Office debit balances, $184,644.69; credit, $89,199.32; net, $95,445.37		95,989.87

EXHIBIT E—Continued

11.	Cash in Company's Branch Offices, $77,186.10; Cash in Transit, $293,257.99	370,444.09	
12.	Total Ledger Assets, as per "balance" on page 3		$875,091,343.09
	Non-ledger Assets		
13.	Interest due $396,334.20 and accrued, $2,197,036.55 on Mortgages, per Schedule B	2,593,370.75	
14.	Interest due, $870,950.89 and accrued, $7,147,902.80 on Bonds, per Schedule D, Part 1.	8,018,853.69	
15.	Interest due, $ 0 and accrued, $ 0 on Collateral Loans, per Schedule C, part 1	0	
16.	Interest due, $ 0 and accrued, $845,106.19 on Premium Notes, Policy Loans on Liens	845,106.19	
17.	Interest due, $ and accrued, $ on other Assets (give items and amounts):		
18.	Interest due, $32,493.00 and accrued, $36,409.00 on Bank Balance	68,902.00	
19.			
20.	Rents due, $27,831.48 and accrued, $1,036.81 on Company's property or lease	28,868.29	
21.	Total interest and rents due and accrued		11,555,100.92
22.	Market value of Real Estate over book value, per Schedule A		0
23.	Market value (not including interest in item 14), on Bonds and Stocks over book value, per Schedule D		0

24.	Due from other companies for losses or claims on policies of this Company reinsured			72,997.50
		New Business (1)	Renewals (2)	
25.	Gross premiums due and unreported on policies in force December 31, 1916 (less reinsurance premiums)	$121,853.91	$8,580,541.53	
26.	Gross deferred premiums on policies in force December 31, 1916 (less reinsurance premiums)	507,821.00	5,382,389.00 $13,962,930.53	
27.	Totals	$629,674.91	3,490,732.63	
28.	Deduct loading, 25%	157,418.73		
			$10,472,197.90	
29.	Net amount of uncollected and deferred premiums	$472,256.18		10,944,454.08
30.	All other Assets (give items and amounts):			
31.				
32.				
33.				
35.	Gross Assets			$897,663,895.59
			Deduct Assets not	
36.	Company's stock owned, $ 0 ; loans on, $ 0 ,		$ 0	
37.	Supplies, stationery, printed matter, $ 0 , furniture, fixtures, and safes $ 0		0	

EXHIBIT E—Continued

38.	Commuted commissions, $ 0 ; agents' debit balances, gross $ 0	0	
39.	Cash advanced to or in the hands of officers or agents	0	
40.	Loans on personal security, endorsed or not, $ 0 ; bills receivable, $544.50	544.50	
41.	Premium notes, policy loans and other policy assets in excess of net value and of other policy liabilities on individual policies.	0	
42.	Overdue and accrued interest on Bonds in default over market value of same	0	
43.	Market value of special deposits in excess of corresponding liabilities, per Special Deposit Schedule, Page 11.	0	
44.	Book value of Ledger Assets over market value, viz., on Stocks and Bonds	30,489,864.83	
45.	Branch Office debit balances	184,644.69	
46.			30,675,054.02
47.	Total Admitted Assets		$866,988,841.57

[fol. 123] V.—Liabilities, Surplus and Other Funds

Net present value of all the outstanding policies in force on the 31st day of December, 1916, as computed by the Insurance Department of the State of New York on the following tables of mortality and rates of interest, viz:

1.	Actuaries' tables at — per cent on*	0	
	Same for reversionary additions	0	
			0

2.	American Experience table at 3 per cent on* all insurances except those specified under 4	$586,287,574.00	
	Same for reversionary additions	6,943,790.00	
			$593,231,364.00
3.	American Experience table at — per cent on*	0	
	Same for reversionary additions	0	
			0
4.	Other tables and rates, viz:*		
	Double American Experience table at 3 per cent on tropical insurances and those on impaired lives	41,977,737.00	
	Same for reversionary additions	187,221.00	
			42,164,958.00
	Sesqui American Experience table at 3 per cent on semi-tropical insurances and those on partially impaired lives	49,842,826.00	
	Same for reversionary additions	153,650.00	
			49,996,476.00

* State definitely the dates of issue and class of policies covered by each basis of valuation.

EXHIBIT E—Continued

5.	Net present value of annuities (including those in reduction of premiums). Give tables and rates of interest, viz:		
	McClintock's Annuity table, 3 per cent	15,018,305.00	
	Total	700,411,103.00	
6.	Deduct net value of risks of this Company reinsured in other solvent companies†	114,423.00	
7.	Net Reserve (Paid-for basis)		$700,206,680.00
8.	Extra reserve for total and permanent disability benefits $295,508.00; and for additional accidental death benefits $5,573.00, included in life policies		301,081.00
9.	Present value of amounts not yet due on supplementary contracts not involving life contingencies; computed by the Company		4,885,900.35
10.	Present value of amounts incurred but not yet due for total and permanent disability benefits		175,504.00

†The net value of risks reinsured in British Companies $902,230 is not included, as these companies are not doing business in the State of NewYork, See Schedule X.

11.	Liability on policies canceled and not included in "net reserve" upon which a surrender value or reinstatement may be demanded		
12.	Claims for Death-Losses due and unpaid		436,828.38
13.	Claims for Death-Losses in process of adjustment, or adjusted and not due	0	
14.	Claims for Death-Losses reported for which no proofs have been received	2,005,941.53	
15.	Reserve for net Death-Losses incurred but unreported	3,429,067.33	
16.	Claims for Matured Endowments due and unpaid	1,500,000.00	
17.	Claims for Death-Losses and other Policy Claims resisted	1,488,050.49	
18.	Claims for total and permanent disability benefits $37,656.00; and for additional accidental death benefits $ 0 , including $3,098.98 resisted	608,409.41	
19.	Due and unpaid on Annuity Claims involving life contingencies	40,745.98	
		162,094.74	
20.	Total Policy Claims		9,234,309.48
21.	Due and unpaid on supplementary contracts not involving life contingencies		4,722.01
22.	Dividends left with the Company to accumulate at interest and accrued interest thereon		1,468,674.90
23.	Premiums paid in advance, including surrender values so applied		940,711.83
24.	Unearned interest ($3,231,535.19) and rent ($34,222.31) paid in advance		3,265,757.50
25.	Commissions due to agents on premium notes when paid		43,695.33
26.	Commissions to agents, due or accrued		9,140.81

Exhibit E—Continued

27.	"Cost of Collection" on uncollected and deferred premiums, in excess of the loading thereon	0
28.	Salaries, rents, office expenses, bills and accounts due or accrued (including $1,902.96 accrued charges on deposits)	119,351.41
29.	Medical Examiners' fees, $28,056.22; Inspectors' fees, $3,101.70; and legal fees, $3,257.27; due or accrued	34,415.19
30.	Estimated amount hereafter payable for Federal, State and other taxes based upon the business of the year of this statement (including $19,750.79 accrued taxes on Interest and Deposits)	1,398,093.78
31.	Advances by officers or others on account of expenses of organization or otherwise	0
32.	Borrowed money, $ 0 , and interest thereon, $ 0	0
33.	Unpaid dividends to stock-holders	0
34.	Dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums	1,478,254.58
35.	Dividends declared on or apportioned to annual dividend policies payable to policy-holders to and including (month) December (day) 31st, 1917, whether contingent upon the payment of renewal premiums or otherwise	10,769,464.00
36.	Dividends declared on or apportioned to deferred dividend policies payable to policy-holders to and including (month) December (day) 31st, 1917	12,539,749.78
37.	Amounts set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 36	87,318,466.00

38.	Reserve, special or surplus funds not included above (give items and amount separately, and state for what purpose each of said funds is held), Security Fluctuation and General Contingency fund, $26,112,815.45; Annual Dividend Equalization funds, $2,021,920.00	28,134,735.45
39.	Reserve for future expenses on Paid-up Annual Dividend policies	430,000.00
40.		
41.		
42.	All other liabilities (give items and amounts):	
43.	Due agents under Nylic contracts	7,686.79
44.	Reserve for Nylic contracts	3,450,227.00
45.	Income tax deducted at source, $6,268.56; reserve for unclaimed receipts, $20,068.44	26,337.00
46.	Guarantee deposits on real estate and rents	219,055.00
47.	Capital Stock	0
48.	Unassigned funds (surplus)	0
49.	Total	$866,988,841.57

[fol. 124]

EXHIBIT F

Annual Statement of the New York Life Insurance Company

I.—Capital Stock

1.	Amount of Capital paid up in cash	$ 0	
2.	Amount of ledger Assets (as per balance), December 31, of previous year		$875,091,343.09

3.	—crease of Capital during the year	.0	
4.	Extended at		$875,091,343 09

II.—Income

5.	First year's premiums on original policies without deduction for commissions or other expenses, less $ 0 for first year's reinsurance	$12,653,093.29	
6.	Surrender values applied to pay first year's premiums	0	
7.	Total first year's premiums on original policies	$12,653,093.29	
8.	Dividends applied to purchase paid-up additions and annuities	2,352,130.32	
9.	Surrender values applied to purchase paid-up insurance and annuities	0	
10.	Consideration for original annuities involving life contingencies	513,938.75	
11.	Consideration for supplementary contracts involving life contingencies	298,895.50	
12.	Total new premiums		15,818,057 86

13.	Renewal premiums (in addition to items 14, 16 and 17) without deduction for commissions or other expenses, less $66,529.90 for reinsurance on renewals [including $29,785.58 premiums waived for total permanent disability]	79,157,960.50	
14.	Dividends applied to pay renewal premiums	7,599,337.57	
15.	Dividends applied to shorten the endowment or premium paying period	27,343.00	
16.	Surrender values applied to pay renewal premiums	167,108.77	
17.	Renewal premiums for deferred annuities	46,761.89	
18.	Total renewal premiums		86,998,511.73
19.	Extra premiums for total permanent disability benefits [first year premiums, $241,051.00; Renewal premiums $351,885.00] $592,936.00; and for additional accidental death benefits [first year premiums $22,682.00; renewal premiums $11,899.00] $34,581.00 included in life policies		627,517.00
20.	Total premium income		103,444,086.59
21.	(A) Consideration for supplementary contracts not involving life contingencies		1,169,695.46

(A) Including commuted value of instalments or other benefits not payable at the time of death or maturity of endowments, such commuted value being entered also under No. 1 or 2 of Disbursements.

EXHIBIT F—Continued

22.	Dividends left with the Company to accumulate at interest (including surrender values of reversionary additions left on deposit $99,989.43)		777,786.74
23.	Ledger assets, other than premiums, received from other companies for assuming their risks		0
24.	Gross interest on mortgage loans, per Schedule B, less $177,269.11 accrued interest on mortgages acquired during 1917	8,258,901.09	
25.	Gross interest on collateral loans, per Schedule C.	6,749.99	
26.	Gross interest on bonds and dividends on stocks, less $243,075.29, accrued interest on bonds acquired during 1917, per Schedule D	22,001,217.82	
27.	Gross interest on premium notes, policy loans or liens	7,831,063.23	
28.	Gross interest on deposit in trust companies and banks, per Schedule E	527,986.85	
29.	Gross interest on other debts due the Company (give items and amounts):		
30.			
31.			
32.	Gross discount on claims paid in advance	9,160.57	

33.	Gross rent from Company's property, including $284,813.48 for Company's occupancy of its own buildings, per Schedule A.	1,322,342.29	
34.	Total gross interest and rents		39,957,421.84
35.	From other sources (give items and amounts):		
36.	Commissions advanced in previous years now repaid $21,958.33; Policy Fees $4,791.46; Exchange, $534,626.19; Doubtful debts recovered $2,331.80; Bonuses received for prepayment or extension of Mortgage Loans $17,573.01; Remittances received not yet adjusted $5,054.79; Revenue stamps redeemed $191.34		586,526.92
37.	Amounts deposited on contracts for sale of real estate forfeiture of which is claimed by the Company		102,500.00
38.	. . . . .		
39.	. . . . .		
40.	From Agents' balances previously charged off . .		0
41.	Borrowed money (gross)*		0

* Company is at liberty to briefly state transaction, so that explanation can be carried as a footnote in Department report.

EXHIBIT F—Continued

42	Gross profit on sale or maturity of ledger assets, viz.:			
	(a) Real estate, per Schedule A	0		
	(b) Bonds, per Schedule D	80,144.43		
	(c) Stocks, per Schedule D	0		
			80,144.43	
43.	Gross increase, by adjustment, in book value of ledger assets, viz.:			
	(a) Real estate, per Schedule A	1,425.71		
	(b) Bonds, per Schedule D (including $440,494.90 for accrual of discount)	442,041.15		
	(c) Stocks, per Schedule D	0		
	(d) Bond and Mortgage	6,634.62		
			450,101.48	
44.	Total Income			$146,568,263.46
45.	Amount carried forward			$1,021,659,606.55

[fol.125] 3

Amount brought forward $1,021,659,606.55

III.—Disbursements

1.	(A) For death claims (less $9,828.30 reinsurance), $29,614,302.38; additions, $994,896.91		$30,599,370.99
2.	(A) For matured endowments (less $91,626.01 reinsurance), $13,631,509.67; additions, $26,525.31		13,566,408.97
3.	(a) For total permanent disability:		
	Premiums waived during the year	29,785.58	
	Payments made to policy-holders during the year	20,900.00	50,685.58
	(b) For additional accidental death benefits		0
4.	Net amount paid for losses and matured endowments		$44,216,465.54
5.	For annuities involving life contingencies		1,387,240.83
6.	Premium notes and liens voided by lapse, less $ 0 restorations		0
7.	Surrender values paid in cash or applied in liquidation of loans or notes		18,360,061.04
8.	Surrender values applied to pay new premiums (see Income No. 6), $ 0 ; to pay renewal premiums (see Income No. 16), $167,108.77		167,108.77

(A) Including commuted value of supplementary contracts—see No. 21 of Income.

Exhibit F—Continued

9.	Surrender values applied to purchase paid-up insurance and annuities (see Income No. 9)	0
10.	Dividends paid to policy-holders in cash or applied in liquidation of loans or notes	12,151,153.54
11.	Dividends applied to pay renewal premiums (see Income No. 14)	7,599,337.57
12.	Dividends applied to shorten the endowment or premium paying period (see Income No. 15)	27,343.00
13.	Dividends applied to purchase paid-up additions and annuities (see Income No. 8)	2,352,130.32
14.	Dividends left with the Company to accumulate at interest (see Income No. 22)	677,797.31
15.	(Total paid policy-holders $86,938,637.92)	
16.	Expense of investigation and settlement of policy claims, including $35,630.98 for legal expense	41,154.31
17.	Paid for claims on supplementary contracts not involving life contingencies	788,260.99
18.	Dividends and interest thereon held on deposit surrendered during the year	139,777.52
19.	Paid stockholders for interest or dividends	0
20.	Commissions to agents (less commission on reinsurance): First year's premiums, $5,895,171.53; renewal premiums, $2,191,025.61; annuities (original), $20,270.56; (renewal), $1,449.37	8,107,917.07

21.	Commuted renewal commissions		0
22.	Compensation of managers and agents not paid by commission for services in obtaining new insurance		30,765.81
23.	Agency supervision and traveling expenses of supervisors (except compensation for Home Office supervision)		1,008,601.78
24.	Branch Office expenses, including salaries of managers and clerks not included in item 22		1,191,861.80
25.	Medical examiners' fees, $488,194.01; inspection of risks, $126,242.38		614,436.39
26.	Salaries and all other compensation of officers, directors, trustees and Home Office employees		2,180,711.60
27.	Rent, including $284,813.48 for Company's occupancy of its own buildings, less $420.00 received under sublease		599,297.67
28.	Advertising, $32,966.24; printing and stationery, $286,517.14; postage, telegraph, telephone and express, $273,493.39; exchange, $ 0		592,976.77
29.	Legal expense not included in item 16		23,888.19
30.	Furniture, fixtures and safes		102,106.49
31.	Repairs and expenses (other than taxes) on real estate		480,063.72
32.	Taxes on real estate		292,995.71
33.	State taxes on premiums		1,045,980.14
34.	Insurance Department licenses and fees		24,599.23
35.	All other licenses, fees and taxes (give items and amounts):		
36.	Federal Corporation tax	$196,967.18	

EXHIBIT F—Continued

37.	Local licenses and taxes, $35,983.92; tax on policy reserves, $61,698.89	97,682.81	
38.	Miscellaneous taxes (including $73,251.13 tax on interest receipts)	159,516.96	
			454,166.95
39.	Other disbursements (give items and amounts):		
40.	Paid agents under Nylic contracts	916,775.82	
41.	Doubtful debts marked off $7,741.62; Fire Losses, $4,310.88; Income Tax, $6,107.62	18,160.12	
42.	Books, Papers and Subscriptions, $10,511.00; Special Inspection Reports, $6,277.83; Lunch for Company's employees, $110,573.37; Miscellaneous Items of Expense, $13,148.01; Legislative and Departmental Expenses, $6,435.88; Expenses Directors' Election, 1917, $237.90; Traveling Expenses, $9,566.64; Examination and Audits of the Company's accounts, $5,046.08; Examination by Insurance Department, State of New York, $9,014.43; Mortality Investigation, $4,596.72	175,407.86	
43.	Miscellaneous Interest Payments, $19,601.82; Bank Charges, $9,804.58; Custody of and Insurance		

	on Securities, $27,476.56; Premiums on Fidelity Bonds, $7,173.07; Real Estate Commissions and Fees, $24,000.00; Real Estate and Mortgage Department Expenses, $16,061.61; National Association of Owners of Railroad Securities, $8,380.78	112,498.42		
44.	Agents' balance charged off		1,222,842.22	
45.	Borrowed money repaid (gross)		0	
46.	Interest on borrowed money		0	
47.	Gross loss on sale or maturity of ledger assets, viz.:			
	(a) Real Estate, per Schedule A	0		
	(b) Bonds, per Schedule D	8,436.95		
	(c) Stocks, per Schedule D	0		
			8,436.95	
48.	Gross decrease, by adjustment, in book value of ledger assets, viz.:			
	(a) Real Estate, per Schedule A	498,528.34		
	(b) Bonds per Schedule D (including $309,490.70 for amortization of premiums)	3,385,603.27		
	(c) Stocks, per Schedule D	187,646.88		
	(d) Bond and Mortgage	322.81		
			4,072,101.30	
49.	Total Disbursements			$109,961,580.53
50.	Balance			$911,698,026.02

EXHIBIT F—Continued

[fol. 126] Annual Statement of the New York Life Insurance Company

IV.—Ledger Assets.

1.	Book value of Real Estate (less 0 incumbrances), per Schedule A		$15,888,000.00
2.	Mortgage Loans on Real Estate, per Schedule B, first liens, $166,687,476.31; other than first liens, $ 0		166,687,476.31
3.	Loans secured by pledge of bonds, stocks or other collateral per Schedule C		421,700.00
4.	Loans made to policy-holders on this Company's policies assigned as collateral		155,628,298.27
5.	Premium Notes on policies in force, of which $ 0 is for first year's premiums		4,481,373.01
6.	Book value of bonds, $552,408,471.10 and stocks, $107,025.00, per Schedule D		552,515,496.10
7.	Cash in Company's office	$5,080.64	
8.	Deposits in trust companies and banks not on interest, per Schedule E	1,839,840.60	
9.	Deposits in trust companies and banks, on interest, per Schedule E	13,721,421.73	
			15,566,342.97

10.	Bills receivable, $2,604.50; agent's' balances (debit, $ 0 , credit, $ 0); net, $ 0 ; Branch Office debit balances, $215,126.23; credit, $86,495.16; net, $128,631.07	131,235.57	
11.	Cash in Company's Branch Offices, $94,357.77; Cash in Transit, $282,133.62	376,491.39	
11½.	United States War Savings Certificates and United States Thrift Stamps	1,612.40	
12.	Total Ledger Assets, as per "balance" on page 3		$911,698,026.02
	Non-ledger Assets.		
13.	Interest due, $264,994.68 and accrued, $2,428,621.06 on Mortgages, per Schedule B	2,693,615.74	
14.	Interest due, $2,066,157.74 and accrued, $7,527,742.56 on Bonds, per Schedule D, part 1	9,593,900.30	
15.	Interest due, $ 0 and accrued, $1,301.06 on Collateral Loans, per Schedule C, Part 1	1,301.06	
16.	Interest due, $ 0 and accrued, $935,885.93 on Premium Notes, Policy Loans or Liens	935,885.93	
17.	Interest due, $ and accrued, $ on other Assets (give items and accounts):		
18.	Interest due, $53,512.00 and accrued, $71,231.00 on Bank Balances		
19.		124,743.00	

EXHIBIT F—Continued

20.	Rents due, $37,285.55 and accrued, $15,304.08 on Company's property or lease		52,589.63	
21.	Total interest and rents due and accrued			13,402,035.66
22.	Market value of Real Estate over book value, per Schedule A			0
23.	Market value (not including interest in item 14), of Bonds and Stocks over book value, per Schedule D			0
24.	Due from other companies for losses or claims on policies of the Company, reinsured			13,524.60
		(1) New Business	(2) Renewals	
25.	Gross premiums due and unreported on policies in force December 31, 1917 (less reinsurance premiums)	$145,596.75	$9,884,783.16	
26.	Gross deferred premiums on policies in force December 31, 1917 (less insurance premiums)	629,487.00	5,707,788.00	
27.	Totals	$775,083.75	$15,592,571.16	
28.	Deducted loading, 25%	193,770.94	3,898,142.79	
29.	Net amount of uncollected and deferred premiums	$581,312.81	$11,694,428.37	
				12,275,741.18
30.	All other Assets (give items and amounts):			

31.			
32.			
33.			
34.			
35.	Gross Assets		$937,389,327.46
	Deduct Assets not Admitted		
36.	Company's stock owned, $ 0 ; loans on, $ 0 ,	0	
37.	Supplies, stationery, printed matter, $ 0 , furniture, fixtures, and safes $ 0 ,	0	
38.	Commuted commissions, $ 0 ; agents' debit balances, gross, $ 0 ,	0	
39.	Cash advanced to or in the hands of officers or agents	0	
40.	Loans on personal security, endorsed or not, $ 0 ; bills receivable, $2,604.50	$2,604.50	
41.	Premium notes, policy loans and other policy assets in excess of net value and of other policy liabilities on individual policies	0	
42.	Overdue and accrued interest on Bonds in default	0	
43.	Market value of special deposits in excess of corresponding liabilities, per Special Deposit Schedule, Page 11	0	
44.	Book value of Ledger Assets over market value, viz., on Stocks and Bonds not subject to amortization	2,242,215.21	

EXHIBIT F—Continued

45.	Branch Office debit balances	215,126.23	
46.			2,459,945.94
47.	Total Admitted Assets		$934,929,381.52

F.

[fol. 127]

V.—Liabilities, Surplus and Other Funds

Net present value of all the outstanding policies in force on the 31st day of December, 1917, as computed by the Insurance Department of the State of New York on the following tables of mortality and rates of interest, viz.:

1.	Actuaries' table at — per cent on*	0	
	Same for reversionary additions	0	
			0
2.	American Experience table at 3 per cent. on* all insurances except those specified under 4	$611,441,015.00	
	Same for reversionary additions	8,096,469.00	
			$619,537,484.00
3.	American Experience table at per cent. on*	0	
	Same for reversionary additions	0	
			0

4.	Other tables and rates, viz.:*		
	Double American Experience table at 3 per cent. on tropical insurances and those on impaired lives	41,858,269.00	
	Same for reversionary additions	199,446.00	
			42,057,715.00
	Sesqui American Experience table at 3 per cent. on semi-tropical insurances and those on partially impaired lives	51,759,150.00	
	Same for reversionary additions	183,978.00	
			51,943,128.00
5.	Net present value of annuities (including those in reduction of premiums). Give tables and rates of interest, viz.:		
	McClintock's Annuity table, 3 per cent.		15,033,396.00
	Total		728,571,723.00
6.	Deduct net value of risks of this Company reinsured in other solvent companies†		86,938.00
7.	Net Reserve (Paid-for basis)		$728,484,785.00

* State definitely the dates of issue and class of policies covered by each basis of valuation.

† The net value of risks reinsured in British Companies $905,280 is not included, as these companies are not doing business in the State of New York, See Schedule X

Exhibit F—Continued

8.	Extra reserve for total and permanent disability benefits $543,694.00; and for additional accidental death benefits $19,800.00, included in life policies		563,494.00
9.	Present value of amounts not yet due on supplementary contracts not involving life contingencies, computed by the Company		5,462,720.13
10.	Present value of amounts incurred but not yet due for total and permanent disability benefits		213,892.00
11.	Liability on policies canceled and not included in "net reserve" upon which a surrender value or reinstatement may be demanded		467,963.84
12.	Claims for Death-Losses due and unpaid	0	
13.	Claims for Death-Losses in process of adjustment, or adjusted and not due	2,044,692.47	
14.	Claims for Death-Losses reported for which no proofs have been received	3,824,403.72	
15.	Reserve for net Death-Losses incurred but unreported	1,500,000.00	
16.	Claims for Matured Endowments due and unpaid	2,154,520.48	
17.	Claims for Death-Losses and other Policy Claims resisted	594,289.88	
18.	Claims for total and permanent disability benefits $32,986.98; and for additional accidental death benefits $10,000, including $4,589.98 resisted	42,896.98	
19.	Due and unpaid on Annuity Claims involving life contingencies	189,515.14	
20.	Total Policy Claims		10,350,318.67

21.	Due and unpaid on supplementary contracts not involving life contingencies	13,849.75
22.	Dividends left with the Company to accumulate at interest and accrued interest thereon	2,180,726.52
23.	Premiums paid in advance, including surrender values so applied	1,093,413.43
24.	Unearned interest ($3,129,273.54) and rent ($7,607.38) paid in advance	3,136,880.92
25.	Commissions due to agents on premium notes when paid	24,091.55
26.	Commissions to agents, due or accrued	9,632.41
27.	"Cost of Collection" on uncollected and deferred premiums, in excess of the loading thereon	0
28.	Salaries, rents, office expenses, bills and accounts due or accrued (including $3,350.72 accrued charges on deposits)	177,424.46
29.	Medical Examiners' fees, $26,908.22; Inspectors' fees, $5,736.90; and legal fees, $4,719.96; due or accrued	37,365.08
30.	Estimated amount hereafter payable for Federal, State and other taxes based upon the business of the year of this statement (including $41,370.75 accrued taxes on Interest and Deposits)	1,957,353.36
31.	Advances by officers or others on account of expenses of organization or otherwise	0
32.	Borrowed money, $ 0 , and interest thereon, $ 0	0
33.	Unpaid dividends to stock-holders	0
34.	Dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums	1,741,222.65
35.	Dividends declared on or apportioned to annual dividend policies payable to policy-holders to and including (month) December (day) 31st, 1918, whether contingent upon the payment of renewal premiums or otherwise	12,437,514.00

EXHIBIT F.—Continued

36.	Dividends declared on or apportioned to deferred dividend policies payable to policy-holders to and including (month) December (day) 31st, 1918	14,123,549.64
37.	Amount set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 30	107,041,778.00
38.	Reserve, special or surplus funds not included above (give items and amounts separately, and state for what purpose each of said funds is held), Security Fluctuation and General Contingency fund, $38,154,807.36; Annual Dividend Equalization funds, $2,429,397.00	40,584,204.36
39.	Reserve for future expenses on Paid-up Annual Dividend policies	610,000.00
40.		
41.		
42.	All other liabilities (give items and amounts):	
43.	Due agents under Nylic contracts	1,315.81
44.	Reserve for Nylic contracts	3,869,029.00
45.	Income tax deducted at source, $160.94; reserve for unclaimed receipts, $25,-141.00	25,301.94
46.	Guarantee deposits on real estate and rents $219,055.00; Deposited on contracts for sale of real estate $102,500.00	321,555.00
47.	Capital Stock	0
48.	Unassigned funds (surplus)	0
49.	Total	$934,929,381.52

EXHIBIT G

Annual Statement of the New York Life Insurance Company

I.—Capital Stock

1. Amount of Capital paid up in cash	$ 0		
2. Amount of ledger Assets (as per balance), December 31, of previous year		$911,698,026.02	
3. —crease of Capital during the year		0	
4. Extended at			$911,698,026.02

II.—Income

5. First year's premiums on original policies without deduction for commissions or other expenses, less $ 0 for first year's reinsurance	$13,530,018.19	
6. Surrender values applied to pay first year's premiums	0	
7. First year's premium on original policies	$13,530,018.19	
8. Dividends applied to purchase paid-up additions and annuities	3,416,881.27	
9. Surrender values applied to purchase paid-up insurance and annuities	0	

EXHIBIT G—Continued

10.	Consideration for original annuities involving life contingencies	411,574.21	
11.	Consideration for supplementary contracts involving life contingencies	532,539.32	
12.	New premiums		$17,891,015.99
13.	Renewal premiums (in addition to items 14, 16 and 17) without deduction for commission or other expenses, less $54,156.93 for reinsurance on renewals [including $30,243.61 premiums waived for total and permanent disability]	$82,624,334.23	
14.	Dividends applied to pay renewal premiums	8,236,286.77	
15.	Dividends applied to shorten the endowment or premium paying period	155,177.00	
16.	Surrender values applied to pay renewal premiums	143,940.26	
17.	Renewal premiums for deferred annuities	54,616.89	
18.	Renewal premiums		91,214,355.15
19.	Extra premiums for total and permanent disability benefits [first year premiums, $297,700.00; Renewal premiums $560,968.00] $858,668.00; and for additional accidental death benefits [first year premiums $143,469.00; renewal premiums $31,287.00] $174,756.00 included in life policies		1,033,424.00
20.	Premium income		$110,138,795.14

20a. Premiums reported during year, on U. S. monthly difference lists, to War Risk Insurance Bureau in accordance with the Soldiers' and Sailors' Civil Relief Act		15,344.02
20b. Totals, items 5-20A inclusive		$110,154,139.16
21. (A) Consideration for supplementary contracts not involving life contingencies		1,421,544.16
22. Dividends left with the Company to accumulate at interest (including surrender values of reversionary additions left on deposit $55,284.94)		919,704.32
23. Ledger assets, other than premiums, received from other companies for assuming their risks		0
24. Gross interest on mortgage loans, per Schedule B, less $39,538.63 accrued interest on mortgages acquired during 1918	$8,655,053.76	
25. Gross interest on collateral loans, per Schedule C	19,902.68	
26. Gross interest on bonds and dividends on stocks, less $210,237.61, accrued interest on bonds acquired during 1918, per Schedule D	23,514,897.40	

(A) Including commuted value of instalments or other benefits not payable at the time of death or maturity of endowments, such commuted value being entered also under No. 1 or 2 of Disbursements.

EXHIBIT G—Continued

27. Gross interest on premium notes, policy loans or liens, including $ 0 interest received on bonds deposited with the Company under the Soldiers' and Sailors' Civil Relief Act	7,498.647.66		
28. Gross interest on deposits in trust companies and banks, per Schedule E	510,406.68		
29. Gross interest on other debts due the Company (give items and amounts):			
30. Agents' debts	82.70		
31.			
32. Gross discount on claims paid in advance	14,478.87		
33. Gross rent from Company's property, including $301,758.06 for Company's occupancy of its own buildings, per Schedule A	1,287,407.23		
34. Total gross interest and rents		41,500,876.98	
35. From other sources (give items and amounts):			
36. Commissions advanced imprevious years, now repaid $18,824.27; Policy Fees $3,290.48; Fire Insurance $5.35; Income Tax $316.88; Doubtful debts recovered $1,281.48; Bonuses received for prepayment or extension of Mortgage Loans $15,987.39		39,705.85	
37.			

38.			
39.			
40. From Agents balances previously charged off		0	
41. Borrowed money (gross)*		24,000,000.00	
42. Gross profit on sale or maturity of ledger assets, viz.:			
(a) Real estate, per Schedule A	$235,916.77		
(b) Bonds, per Schedule D	82,394.00		
(c) Stocks, per Schedule D	425.00		
		318,735.77	
43. Gross, by adjustment, in book value of ledger assets, viz.:			
(a) Real estate, per Schedule A	0		
(b) Bonds, per Schedule D (including $524,269.01 for accrual of discount)	$524,269.01		
(c) Stocks, per Schedule D	0		
(d) Bond and Mortgage	7,404.15		
		531,673.16	
44. Total Income			$178,886,379.40
45. Amount carried forward			$1,090,584,405.42

*Company is at liberty to briefly state transaction, so that explanation can be carried as a footnote in Department report.

*This amount was borrowed to increase Company's subscription to Fourth Liberty Loan.

EXHIBIT G—Continued

[fol. 129] 3

Amount brought forward			$1,090,584,405.42

III.—Disbursements

1. (A) For death claims (less $24,332.50 reinsurance), $34,144,975.86; additions, $866,181.75		$35,011,157.61	
2. (A) For matured endowments (less $14,599.50 reinsurance), $15,819,082.96; additions, $23,373.09		15,842,456.05	
3. (a) For total and permanent disability:			
Premiums waived during the year	$30,243.61		
Payments made to policy-holders during the year	32,593.32		
		62,836.93	
(b) For additional accidental death benefits		59,000.00	
4. Net amount paid for losses and matured endowments			$50,975,450.59
5. For annuities involving life contingencies			1,394,701.12
6. Premium notes and liens voided by lapse, less $ 0 restorations			0
7. Surrender values paid in cash or applied in liquidation of loans or notes			19,092,107.90
8. Surrender values applied to pay new premiums (see Income No. 6), $; to pay renewal premiums (see Income No. 16), $143,940.26			143,940.26

9. Surrender values applied to purchase paid-up insurance and annuities (see Income No. 9)	0
10. Dividends paid to policy-holders in cash or applied in liquidation of loans or notes	13,420,888.91
11. Dividends applied to pay renewal premiums (see Income No. 14)	8,236,286.77
12. Dividends applied to shorten the endowment or premium paying period (see Income No. 15)	155,177.00
13. Dividends applied to purchase paid-up additions and annuities (see Income No. 8)	3,416,884.27
14. Dividends left with the Company to accumulate at interest (see Income No. 22)	864,419.38
15. (Total paid policy-holders, $97,699,856.20)	
16. Expense of investigation and settlement of policy claims, including $41,818.44 for legal expense	48,817.92
17. Paid for claims on supplementary contracts not involving life contingencies	863,872.00
18. Dividends and interest thereon held on deposit surrendered during the year	282,385.18
19. Paid stockholders for interest or dividends	0
20. Commissions to agents (less commission on reinsurance): First year's premiums, $6,568,636.82; renewal premiums, $2,321,768.28; annuities (original), $14,075.02; (renewal), $1,973.55	8,906,453.67

(A) Including commuted value of supplementary contracts—see No. 21 of Income.

Exhibit G—Continued

21. Commuted renewal commissions	0
22. Compensation of managers and agents not paid by commission for services in obtaining new insurance	37,870.52
23. Agency supervision and traveling expenses of supervisors (except compensation for Home Office supervision)	1,084,335.20
24. Branch Office expenses, including salaries of managers and clerks not included in item 22	1,338,722.61
25. Medical examiners' fees, $462,107.11; inspection of risks, $117,123.22	579,230.33
26. Salaries and all other compensation of officers, directors, trustees and Home Office employees	2,378,583.03
27. Rent, including $301,758.06 for Company's occupancy of its own buildings, less $2,890.15 received under sublease	607,965.61
28. Advertising, $40,666.31; printing and stationery, $333,639.19; postage, telegraph, telephone and express, $305,836.01; exchange, $228,067.48	908,208.99
29. Legal expense not included in item 16	19,598.75
30. Furniture, fixtures and safes	69,628.27
31. Repairs and expenses (other than taxes) on real estate	454,737.46
32. Taxes on real estate	322,857.37
33. State taxes on premiums	1,127,789.94
34. Insurance Department licenses and fees	21,064.09
35. All other licenses, fees and taxes (give items and amounts):	

36.	Federal Corporation tax	$949,837.52	
37.	Local licenses and taxes, $50,917.92; tax on policy reserves $64,094.10	115,012.02	
38.	Miscellaneous taxes (including $39,414.38 tax on interest receipts)	41,616.93	
			1,106,466.47
39.	Other disbursements (give items and amounts):		
40.	Paid agents under Nylic contracts	$950,021.49	
41.	Doubtful debts marked off $7,477.81; Credit allowed for remittances sent and not received, $118.03; Remittances not yet adjusted, $667.77; Guaranteed Deposit now availed of, $2,500.00;	10,763.61	
42.	Books, Papers and Subscriptions, $11,071.64; Special Inspection Reports, $5,375.68; Lunch for Company's employees, $138,560.90; Miscellaneous Items of Expense, $13,789.87; Legislative and Departmental Expenses, $1,029.46; Traveling Expenses, $16,100.77; Examination and Audits of the Company's accounts, $4,857.26; Examination by Insurance Department, State of New York, $10,667.37; Transfer of Company's Records from Paris to Lyons, France, $22,589.91; Contributions to Red Cross and United War Work Compaign Funds, $100,000.00	324,042.86	

EXHIBIT G—Continued

43. Miscellaneous Interest Payments, $12,576.06; Bank Charges, $7,052.00; Custody of and Insurance on Securities, $13,979.66; Premiums on Fidelity Bonds, $6,366.00; Real Estate Commissions and Fees, $22,435.00; Real Estate and Mortgage Department Expenses, $8,484.49; National Association of Owners of Railroad Securities, $8,552.92	79,446.19	
		1,364,274.15
44 Agents' balance charged off		0
45. Borrowed money repaid (gross)		1,320,000.00
46. Interest on borrowed money		0
47. Gross loss on sale or maturity of ledger assets, viz.:		
(a) Real Estate, per Schedule A	0	
(b) Bonds, per Schedule D	$5,825.80	
(c) Stocks, per schedule D	0	
		5,825.80
48. Gross decrease, by adjustment, in book value of ledger assets, viz.:		
(a) Real Estate, per Schedule A	$734,361.65	
(b) Bonds per Schedule D (including $315,320.89 for amortization of premiums)	1,422,002.92	
(c) Stocks, per Schedule D	0	

	(d) Bond and Mortgage	299.47		
49.	Total Disbursements		2,156,664.04	$122,700,207.00
	Balance			$967,884,198.42

IV.—Ledger Assets

1.	Book value of Real Estate (less $ 0 incumbrances), per Schedule A	$13,449,600.00
2.	Mortgage Loans on Real Estate, per Schedule B, first liens, $166,053,804.71; other than first liens, $ 0	166,053,804.71
3.	Loans secured by pledge of bonds, stocks or other collateral per Schedule C	718,550.00
3A.	Premiums reported on U. S. monthly difference lists, to War Risk Insurance Bureau, in accordance with the Soldiers' and Sailors' Civil Relief Act	15,344.02
4.	Loans made to policy-holders on this Company's policies assigned as collateral	150,990,219.79
5.	Premium Notes on policies in force, of which $ 0 is for first year's premiums	4,124,582.57
6.	Book value of bonds, $610,798,650.92 and stocks, $99,375.00, per Schedule D	610,898,025.92

Exhibit G—Continued

7.	Cash in Company's office	$3,828.45	
8.	Deposits in trust companies and banks not on interest, per Schedule E	4,991,325.80	
9.	Deposits in trust companies and banks, on interest per Schedule E	15,295,680.63	
			20,290,834.88
10.	Bills receivable, $544.50; agents' balances (debit, $ 0 , credit, $ 0); net, $ 0 Branch Office debit balances, $368,806.03; credit, $326,446.92; net, $42,359.11		42,903.61
11.	Cash in Company's Branch Offices, $462,482.79; Cash in Transit, $815,709.42		1,278,192.21
11½	United States War Savings Certificates and United States Thrift Stamps		22,140.71
12.	Total Ledger Assets, per "balance" on page 3		$967,884,198.42

Non-Ledger Assets

13.	Interest due, $121,634.63 and accrued, $2,429,938.61 on Mortgages, per Schedule B	$2,551,573.24
14.	Interest due, $3,200,303.09 and accrued, $8,168,084.49 on Bonds, per Schedule D, Part 1	11,368,387.58
15.	Interest due, $ 0 and accrued, $6,580.99 on Collateral Loans, per Schedule C, part 1	6,580.99
16.	Interest due, $ 0 and accrued, $1,021,590.65 on Premium Notes, Policy Loan or Liens	1,021,590.65

17.	Interest due, $ and accrued, $ on other Assets (give items and amounts):			
18.	Interest due, $55,341.00 and accrued, $60,372.00 on Bank Balances		115,713.00	
19.				
20.	Rents due, $27,323.41 and accrued, $14,233.75 on Company's property or lease		41,557.16	
21.	Total interest and rents due and accrued			15,105,402.62
22.	Market value of Real Estate over book value, per Schedule A			0
23.	Market value (not including interest in item 14), of Bonds and Stocks over book value, per Schedule D			0
24.	Due from other companies for losses or claims on policies of this Company, reinsured			194,660.00
		(1) New Business.	(2) Renewals.	
25.	Gross premiums due and unreported on policies in force December 31, 1918 (less reinsurance premiums)	$127,786.34	$10,228,810.21	
26.	Gross deferred premiums on policies in force December 31, 1918 (less reinsurance premiums)	809,242.00	7,031,190.00	
27.	Totals	$937,028.34	$17,260,000.21	
28.	Deduct loading, 25%	234,257.09	4,315,000.05	
29.	Net amount of uncollected and deferred premiums	$702,771.25	$12,945,000.16	13,647,771.41

Exhibit G—Continued

30.	All other Assets (give items and amounts):		
31.	.....		
32.	.....		
33.	.....		
34.	.....		
35.	Gross Assets		$996,832,032.45
	Deduct Assets not Admitted		
36.	Company's stock owned, $ 0 ; loans on, $ 0 , ...	$0	
37.	Supplies, stationery, printed matter, $ 0 , furniture, fixtures, and safes $ 0	0	
38.	Commuted commissions, $ 0 ; agents' debit balances, gross, $ 0	0	
39.	Cash advanced to or in the hands of officers or agents	0	
40.	Loans on personal security, endorsed or not, $ 0 ; bills receivable, $544.50	544.50	
41.	Premium notes, policy loans and other policy assets in excess of net value and of other policy liabilities on individual policies..	0	
42.	Overdue and accrued interest on Bonds in default	0	
43.	Market value of special deposits in excess of corresponding liabilities, per Special Deposit Schedule, Page 11	0	
44.	Book value of Ledger Assets over market value, viz., on Stocks and Bonds not subject to amortization	1,180,737.06	

45.	Branch Office debit balances	368,806.03	
46.	Reinsurance due from Foreign Companies not transacting business in the State of New York	194,660.00	
		1,744,747.59	
47.	Total Admitted Assets		$995,087,284.86

G₂

[fol. 131] 5

V.—Liabilities, Surplus and Other Funds

Net present value of all the outstanding policies in force on the 31st day of December, 1918, as computed by the Insurance Department of the State of New York on the following tables of mortality and rates of interest, viz:

1.	Actuaries' tables at per cent on*	0	
	Same for reversionary additions	0	
			0
2.	American Experience table at .. per cent on* all insurances except those specified under 4	$636,755,894.00	
	Same for reversionary additions	9,619,835.00	
			$646,375,729.00

* State definitely the dates of issue and class of policies covered by each basis of valuation.

EXHIBIT G—Continued

3. American Experience table at per cent on*	0		
Same for reversionary additions	0		
		0	
4. Other tables and rates; viz.:*			
Double American Experience table at 3 per cent on tropical insurances and on policies issued prior to 1907 on impaired lives	$41,093,493.00		
Same for reversionary additions	215,130.00		
		41,308,623.00	
Sesqui American Experience table at 3 per cent on semi-tropical insurances and on policies issued prior to 1907 on partially impaired lives	$52,414,459.00		
Same for reversionary additions	213,000.00		
		52,627,459.00	
5. Net present value of annuities (including those in reduction of premiums). Give tables and rates of interest, viz.:			
McClintock's Annuity table, 3 per cent		15,437,886.00	
Total		$755,749,697.00	
6. Deduct net value of risks of this Company reinsured in other solvent companies†		50,175.00	
7. Net Reserve (Paid-for basis)			$755,699,522.00

8.	Extra reserve for total and permanent disability benefits $891,473.00; and for additional accidental death benefits $104,857.00, included in life policies		996,330.00
9.	Present value of amounts not yet due on supplementary contracts not involving life contingencies, computed by the Company		6,234,168.45
10.	Present value of amounts incurred but not yet due for total and permanent disability benefits		255,458.00
11.	Liability on policies canceled and not included in "net reserve" upon which a surrender value or reinstatement may be demanded.		501,838.30
12.	Claims for Death-Losses due and unpaid	0	
13.	Claims for Death-Losses in process of adjustment, or adjusted and not due	3,770,298.70	
14.	Claims for Death-Losses reported for which no proofs have been received	7,412,184.51	
15.	Reserve for net Death-Losses incurred but unreported	1,500,000.00	
16.	Claims for Matured Endowments due and unpaid	3,833,802.82	
17.	Claims for Death-Losses and other Policy Claims resisted	570,589.19	
18.	Claims for total and permanent disability benefits $114,317.32; and for additional accidental death benefits $27,500.00 including $1,605.98 resisted	141,817.32	

* State definitely the dates of issue and class of policies covered by each basis of valuation.

† The net value of risks reinsured in British Companies $742,847 is not included, as these companies are not doing business in the State of New York, See Schedule X.

EXHIBIT G—Continued

19.	Due and unpaid on Annuity Claims involving life contingencies	218,508.06	
20.	Total Policy Claims		17,447,200.00
21.	Due and unpaid on supplementary contracts not involving life contingencies		20,086.95
22.	Dividends left with the Company to accumulate at interest and accrued interest thereon		2,930,750.00
23.	Premiums paid in advance, including surrender values so applied		1,557,701.74
24.	Unearned interest ($2,947,730.98) and rent ($10,100.37 paid in advance		2,957,831.35
25.	Commissions due to agents on premium notes when paid		3,739.82
26.	Commissions to agents, due or accrued		10,685.08
27.	"Cost of Collection" on uncollected and deferred premiums, in excess of the loading thereon		0
28.	Salaries, rents, office expenses, bills and accounts due or accrued (including $2,266.83 accrued charges on deposits)		207,500.00
29.	Medical Examiners' fees, $37,696.53; Inspector's fees, $6,472.16; and legal fees, $5,527.82; due or accrued		49,696.51
30.	Estimated amount hereafter payable for Federal, State and other taxes based upon the business of the year of this statement (including $27,737.77 accrued taxes on Interest on Bonds)		3,282,492.42
31.	Advances by officers or others on account of expenses of organization or otherwise.		0
32.	Borrowed money, $22,680,000.00, and accrued interest thereon, $183,879.44		22,863,879.44
33.	Unpaid dividends to stockholders		0
34.	Dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums		2,181,647.26

35.	Dividends declared on or apportioned to annual dividend policies payable to policy-holders to and including (month) December (day) 31st, 1919, whether contingent upon the payment of renewal premiums or otherwise	13,636,876.00
36.	Dividends declared on or apportioned to deferred dividend policies payable to policy-holders to and including (month) December (day) 31st, 1919	19,000,738.00
37.	Amounts set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 36	100,893,328.00
38.	Reserve, special or surplus funds not included above (give items and amounts separately, and state for what purpose each of said funds is held), Security Fluctuation and General Contingency fund, $36,330,383.43; Annual Dividend Equalization funds, $2,449,545.00	38,779,928.43
39.	Reserve for future expenses on Paid-up Annual Dividend policies	730,000.00
40.		
41.		
42.	All other liabilities (give items and amounts):	
43.	Due agents under Nylic contracts	2,599.24
44.	Reserve for Nylic contracts	4,499,281.00
45.	Income tax deducted at source, $477.82; reserve for unclaimed receipts, $24,473.23	24,951.05
46.	Guarantee deposits on real estate and rents $219,055.00; Deposited on contracts for sale of real estate $100,000.00	319,055.00
47.	Capital stock	0
48.	Unassigned funds (surplus)	0.
49.	Total	$995,087,284.86

EXHIBIT H

[fol. 132] 2 Annual Statement of the New York Life Insurance Company

I.—Capital Stock

1.	Amount of Capital paid up	$ 0		
2.	Amount of ledger Assets (as per balance), December 31, of previous year		$967,884,198 42	
3.	—crease of Capital during the year		0	
3½	Amount of Ledger Assets taken over by the Russian Soviet Government		33,187,609 14	
4.	Extended at			$934,696,589.28

II.—Income

5.	First year's premiums on original policies without deduction for commissions or other expenses, less $ 0 for first year's reinsurance	$20,555,051 43	
6.	Surrender values applied to pay first year's premiums	0	
7.	First year's premiums on original policies	$20,555,051 43	

8.	Dividends applied to purchase paid-up additions and annuities	3,303,267.76	
9.	Surrender values applied to purchase paid-up insurance and annuities	0	
10.	Consideration for original annuities involving life contingencies	412,678.89	
11.	Consideration for supplementary contracts involving life contingencies	639,677.83	
12.	New premiums		$24,910,675.91
13.	Renewal premiums (in addition to items 14, 16 and 17) without deduction for commissions or other expenses, less $55,624.44 for reinsurance on renewals [including $39,748.42 premiums waived for total and permanent disability]	$88,573,220.92	
14.	Dividends applied to pay renewal premiums	8,811,162.83	
15.	Dividends applied to shorten the endowment or premium paying period	183,142.00	
16.	Surrender values applied to pay renewal premiums	219,458.46	
17.	Renewal premiums for deferred annuities	62,394.90	
18.	Renewal premiums		97,849,279.11
19.	Extra premiums for total and permanent disability benefits [first year premiums, $511,163.00; Renewal premiums $834,651.00] $1,345,-		

	814.00; and for additional accidental death benefits [first year premiums $397,164.00; renewal premiums $211,363.00] $608,527.00 included in life policies		1,954,341 00
20.	Premium income		$124,714,296 02
20A.	Premiums reported during year, on U. S. monthly difference lists, to War Risk Insurance Bureau in accordance with the Soldiers' and Sailors' Civil Relief Act		15,179 42
20B.	Totals, items 5-20A inclusive		$124,729,475 44
21.	(A) Consideration for supplementary contracts not involving life contingencies		1,099,635 21
22.	Dividends left with the Company to accumulate at interest (including surrender values of reversionary additions left on deposit $47,543.85)		997,201 54
23.	Ledger assets, other than premiums, received from other companies for assuming their risks		0
24.	Gross interest on mortgage loans, less $32,239.09 accrued interest on mortgages acquired during 1919	$8,427,497 10	

25.	Gross interest on collateral loans, per Schedule C	31,586.07	
26.	Gross interest on bonds and dividends on stocks, less $423,618.88, accrued interest on bonds acquired during 1919, per Schedule D	25,485,665.65	
27.	Gross interest on premium notes, policy loans or liens, including $680.75 interest received on bonds deposited with the Company under the Soldiers' and Sailors' Civil Relief Act	7,418,912.29	
28.	Gross interest on deposits in trust companies and banks, per Schedule E	606,049.60	
29.	Gross interest on other debts due the Company (give items and amounts):		
30.	Agents' debts	20.92	
31.			
32.	Gross discount on claims paid in advance	11,113.86	
33.	Gross rent from Company's property, including $289,695.28 for Company's occupancy of its own buildings, less $ 0 interest on incumbrances, per Schedule A	1,245,850.34	
34.	Total interest and rents		43,226,695.83

(A) Including commuted value of instalments or other benefits not payable at the time of death or maturity of endowments, such commuted value being entered also under No. 1 or 2 of Disbursements.

EXHIBIT H—Continued

35.	From other sources (give items and amounts):		
36.	Commissions advanced in previous years now repaid $56,850.32; Policy Fees $2,859.69; Fire Insurance $133.65; Federal Income Tax $897.94; Doubtful debts recovered $2,456.46; Bonuses received for prepayment or extension of Mortgage Loans $17,682.39; Remittances not yet adjusted $25,813.21		106,693.66
37.	Sale of Law-library, Kansas City		3,500.00
38.	Exchange		677,476.56
39.	Amount deposited on contract of sale of Real Estate, forfeiture of which is claimed by the Company		750.00
40.	From Agents' balances previously charged off		0
41.	Borrowed money (gross)*		4,700,000.00
42.	Gross profit on sale or maturity of ledger assets viz:		
	(a) Real estate, per Schedule A	$1,264,601.00	
	(b) Bonds, per Schedule D	31,961.73	
	(c) Stocks, per Schedule D	0	
			1,296,562.73

43.	Gross increase, by adjustment, in book value of ledger assets.:			
	(a) Real estate, per Schedule A	$71,665.82		
	(b) Bonds, per Schedule D (including $340,-210.73 for accrual of discount)	340,210.73		
	(c) Stocks, per Schedule D	0		
	(d) Bond and Mortgage	6,454.60		
			418,331.15	
44.	Total Income			$177,256,322.12
45.	Amount carried forward			$1,111,952,911.40
[fol. 133]				3
	Amount brought forward			$1,111,952,911.40

III.—Disbursements

1.	(A) For death claims (less $51,773.31 reinsurance), $37,477,433.36; additions, $871,575.77	$38,349,009.13	
2.	(A) For matured endowments (less $ 0 reinsurance), $21,963,115.44; additions, $48,718.87	22,011,834.31	

(A) Including commuted value of supplementary contracts—see No. 21 of Income.

*Company is at liberty to briefly state transaction, so that explanation can be carried as a footnote in Department report.

*This amount was borrowed to increase Company's subscription to Liberty Victory Loan.

Exhibit H—Continued

3. (a) For total and permanent disability:			
Premiums waived during the year	$39,748.42		
Payments made to policy-holders during the year	44,143.32	83,891.74	
(b) For additional accidental death benefits		182,473.55	
4. Net amount paid for losses and matured endowments			$60,627,208.73
5. For annuities involving life contingencies			1,477,700.34
6. Premium notes and liens voided by lapse, less $ 0 restorations			0
7. Surrender values paid in cash or applied in liquidation of loans or notes			22,151,566.08
8. Surrender values applied to pay new premiums (see Income No. 6), $ 0 ; to pay renewal premiums (see Income No. 16), $219,458.46			219,458.46
9. Surrender values applied to purchase paid-up insurance and annuities (see Income No. 9)			0
10. Dividends paid to policy-holders in cash or applied in liquidation of loans or notes			18,451,457.61
11. Dividends applied to pay renewal premiums (see Income No. 14)			8,811,162.83

12.	Dividends applied to shorten the endowment or premium paying period (see Income No. 15)	183,142 00
13.	Dividends applied to purchase paid-up additions and annuities (see Income No. 8)	3,303,267 76
14.	Dividends left with the Company to accumulate at interest (see Income No. 22)	949,657 69
15.	(Total paid policy-holders $116,174,621.50)	
16.	Expense of investigation and settlement of policy claims, including $37,955.92 for legal expense	42,284 66
17.	Paid for claims on supplementary contracts not involving life contingencies	1,036,655 76
18.	Dividends and interest thereon held on deposit surrendered during the year	390,354 82
19.	Paid stockholders for dividends (amount declared during the year, $ 0 ; stock, $ 0	0
20.	Commissions to agents (less commission on reinsurance): First year's premiums, $10,166,799.40; renewal premiums, $2,583,086.67; annuities (original), $13,555.66; (renewal), $2,034.32	12,765,476 05
21.	Commuted renewal commissions	0
22.	Compensation of managers and agents not paid by commission for services in obtaining new insurance	187,272 30
23.	Agency supervision and traveling expenses of supervisors (except compensation for Home Office supervision)	1,078,486 54

EXHIBIT H—Continued

24.	Branch Office expenses, including salaries of managers and clerks not included in item 22		1,758,241.35
25.	Medical examiners' fees, $721,311.05; inspection of risks, $165,517.89		886,828.94
26.	Salaries and all other compensation of officers, directors, trustees and Home Office employees		2,691,731.40
27.	Rent, including $289,695.28 for Company's occupancy of its own buildings, less $5,058.67 received under sublease		608,366.32
28.	Advertising, $52,445.87; printing and stationery, $303,398.90; postage, telegraph, telephone and express, $300,114.05. Exchange $0		655,958.82
29.	Legal expense not included in item 16		18,199.07
30.	Furniture, fixtures and safes		168,512.86
31.	Repairs and expenses (other than taxes) on real estate		407,107.35
32.	Taxes on real estate		298,848.60
33.	State taxes on premiums		1,278,534.57
34.	Insurance Department licenses and fees		30,376.36
35.	Federal Taxes		697,359.98
36.	All other licenses, fees and taxes (give items and amounts):		
37.	Local licenses and taxes, $34,726.31; tax on policy reserves, $66,863.99	$101,590.30	
38.	Miscellaneous taxes (including $22,412.70 tax on interest receipts)	395,427.81	
39.			497,018.11

40.	Other disbursements (give items and amounts):		
41.	Paid agents under Nylic contracts	$995,354 42	
42.	Doubtful debts marked off $5,930.92; Guaranteed Deposit now available of, $219,055.00	224,985 92	
43.	Books, Papers and Subscriptions, $17,062.71; Special Inspection Reports, $5,889.96; Lunch for Company's employees, $177,159.57; Miscellaneous Items of Expense, $15,570.76; Legislative and Departmental Expenses, $3,013.96; Traveling Expenses, $16,504.32; Examination and Audits of the Company's accounts, $4,828.21; Expenses Directors election, 1919, $367.45; Foodstuffs sent to European Department Employees, $4,300.00	244,696.94	
44.	Miscellaneous Interest Payments, $80,546.37; Bank Charges, $8,123.87; Custody of and Insurance on Securities, $17,178.74; Premiums on Fidelity Bonds, $6,591.10; Real Estate Commissions and Fees, $40,300.00; Real Estate and Mortgage Department Expenses, $9,273.18; National Association of Owners of Railroad Securities, $8,516.27	170,529 53	
			1,635,566 81

Exhibit H—Continued

45.	Agents' balances charged off		0	
46.	Borrowed money repaid (gross)		27,380,000.00	
47.	Interest on borrowed money		599,950.51	
48.	Gross loss on sale or maturity of ledger assets, viz.:			
	(a) Real Estate, per Schedule A	0		
	(b) Bonds, per Schedule D	$32,214.87		
	(c) Stocks, per Schedule D	0		
			32,214.87	
49.	Gross decrease, by adjustment, in book value of ledger assets, viz:			
	(a) Real Estate, per Schedule A	$4,776.20		
	(b) Bonds per Schedule D (including $330,004.89 for amortization of premiums)	4,118,009.14		
	(c) Stocks, per Schedule D	0		
	(d) Bond and Mortgage	199.61		
			4,122,984.95	
50.	Total Disbursements			$175,442,962.50
51.	Balance			$936,509,948.90

H 2

10—93

IV.—Ledger Assets

1.	Book value of Real Estate (less $ 0 incumbrances) per Schedule A		$9,070,481.00
2.	Mortgage Loans on Real Estate, per Schedule B, first liens, $159,869,677.31; other than first liens, $ 0		159,869,677.31
3.	Loans secured by pledge of bonds, stocks or other collateral per Schedule C		159,000.00
3A.	Premiums reported on U. S. monthly difference lists, to War Risk Insurance Bureau, in accordance with the Soldiers' and Sailors' Civil Relief Act		30,523.44
4.	Loans made to policy-holders on this Company's policies assigned as collateral		141,006,021.32
5.	Premium Notes on policies in force, of which $ 0 is for first year's premiums		4,179,913.45
6.	Book value of bonds, $601,349,888.64 and stocks, $99,375.00, per Schedule D		601,449,263.64
7.	Cash in Company's office	$6,214.82	
8.	Deposits in trust companies and banks not on interest, per Schedule E	2,117,768.99	
9.	Deposits in trust companies and banks, on interest, per Schedule E	17,922,024.22	
			20,046,008.03

145

EXHIBIT H—Continued

10.	Bills receivable, $544.50; agents' balances (debit, $ 0 , credit, $ 0); net, $ 0 Branch Office debit balances, $242,981.60; credit $188,382.41; net, $54,599.19	55,143.69	
11.	Cash in Company's Branch Offices, $71,741.28; Cash in Transit, $572,175.74	643,917.02	
12.	Total Ledger Assets, as per "balance" on page 3		$936,509,948.90
	Non-ledger Assets		
13.	Interest due, $111,193.41 and accrued, $2,361,075.85, on Mortgages	$2,472,269.26	
14.	Interest due, $306,516.65 and accrued, $7,929,611.05 on Bonds, per Schedule D, Part 1	8,236,127.70	
15.	Interest due, $ 0 and accrued, $1,290.99 on Collateral Loans, per Schedule C, part 1	1,290.99	
16.	Interest due, $ 0 and accrued, $1,012,585.45 on Premium Notes, Policy Loans or Liens	1,012,585.45	
17.	Interest due, $ and accrued, $ on other Assets (give items and amounts):		
18.	Interest due, $60,507.82 and accrued, $57,388.46 on Bank Balances	117,896.28	
19.			
20.	Rents due, $7,968.82 and accrued, $1,251.38 on Company's property or lease	9,220.20	
21.	Total interest and rents due and accrued		11,849,389.88
22.	Market value of Real Estate over book value, per Schedule A		0

23.	Market value (not including interest in item 14), of Bonds and Stocks over book value, per Schedule D			0
24.	Due from other companies for losses or claims on policies of this Company, reinsured			55,964.75
		(1) New Business	(2) Renewals	
25.	Gross premiums due and unreported on policies in force December 31, 1919 (less reinsuranee premiums)	$194,672.38	$9,503,065.56	
26.	Gross deferred premiums on policies in force December 31, 1919 (less reinsurance premiums)	1,398,715.00	7,561,351.00	
27.	Totals	$1,593,387.38	$17,064,416.56	
28.	Deduct loading, 25%	398,346.84	4,266,104.14	
29.	Net amount of uncollected and deferred premiums	$1,195,040.54	$12,798,312.42	13,993,352.96
31.				
32.				
33.				
34.				
35.	Gross Assets			$962,408,656.49

EXHIBIT H—Continued

Deduct Assets not Admitted

36.	Company's stock owned, $ 0 ; loans on, $ 0 ,	$0	
37.	Supplies, stationery, printed matter, $ 0 , furniture, fixtures, and safes $ 0 ,	0	
38.	Commuted commissions, $ 0 ; agents' debit balances, gross, $ 0 ,	0	
39.	Cash advanced to or in the hands of officers or agents	0	
40.	Loans on personal security, endorsed or not, $ 0 ; bills receivable, $544.50	$544.50	
41.	Premium notes, policy loans and other policy assets in excess of net value and of other policy liabilities on individual policies	0	
42.	Overdue and accrued interest on Bonds in default	0	
43.	Market value of special deposits in excess of corresponding liabilities, per Special Deposit Schedule, Page 10	0	
44.	Book value of real estate over market value	0	
45.	Book value of bonds and stocks over market value, viz.: on Bonds and Stocks not subject to amortization	1,087,045.59	
46.	Book value of other Ledger Assets over market value, viz.:	0	
46A.	Branch Office debit balances	242,981.60	
46B.	Reinsurance due from Foreign Companies not transacting business in the State of New York	55,964.75	
			1,386,536.44
47.	Total Admitted Assets		$961,022,120.05

H 3

Net present value of all the outstanding policies in force on the 31st day of December, 1919, as computed by the Insurance Department of the State of New York on the following tables of mortality and rates of interest, viz.:			
1. Actuaries' table at per cent. on*	0		
Same for revisionary additions	0		
			0
2. American Experience table at 3 per cent. on* all insurances except those specified under 4	$638,848,396.00		
Same for reversionary additions	11,213,416.00		
			$650,061,812.00
3. American Experience table at per cent. on*	0		
Same for reversionary additions	0		
			0
4. Other tables and rates, viz.:*			
Double American Experience table at 3 per cent. on tropical insurances and on policies issued prior to 1907 on impaired lives	$36,999,388.00		

* State definitely the dates of issue and class of policies covered by each basis of valuation.

EXHIBIT H—Continued

Same for reversionary additions	230,805.00		
		37,230,193.00	
Sesqui American Experience table at 3 per cent. on semi-tropical insurances and on policies issued prior to 1907 on partially impaired lives	$51,971,888.00		
Same for reversionary additions	247,950.00		
		52,219,838.00	
5. Net present value of annuities (including those in reduction of premiums). Give tables and rates of interest, viz.:			
McClintock's Annuity table, 3 per cent		15,800,070.00	
Total		$755,311,913.00	
6. Deduct net value of risks of this Company reinsured in other solvent companies†		50,650.00	
7. Net Reserve (Paid-for basis)‡			$755,261,263.00
8. Extra reserve for total and permanent disability benefits $1,474,603.00; and for additional accidental death benefits $362,436.00, included in life policies			1,837,039.00
9. Present value of amounts not yet due on supplementary contracts not involving life contingencies, computed by the Company			6,429,929.62

10.	Present value of amounts incurred but not yet due for total and permanent disability benefits	.....	457,876.00
11.	Liability on policies canceled and not included in "net reserve" upon which a surrender value or reinstatement may be demanded	.....	429,565.37
12.	Claims for Death-Losses due and unpaid	0	
13.	Claims for Death-Losses in process of adjustment, or adjusted and not due	2,092,431.89	
14.	Claims for Death-Losses reported for which no proofs have been received	4,041,111.52	
15.	Reserve for net Death-Losses incurred but unreported	2,000,000.00	
16.	Claims for Matured Endowments due and unpaid	2,275,029.93	
17.	Claims for Death-Losses and other Policy Claims resisted	461,088.58	
18.	Claims for total and permanent disability benefits $98,818.00; and for additional accidental death benefits $6,000.00 including $3,250.00 resisted	104,818.00	
19.	Due and unpaid on Annuity Claims involving life contingencies	189,098.62	
20.	Total Policy Claims		11,163,578.54
21.	Due and unpaid on supplementary contracts not involving life contingencies		2,348.24
22.	Dividends left with the Company to accumulate at interest and accrued interest thereon		3,730,750.00

† The net value of risks reinsured in British Companies $815,799 is not included, as these companies are not doing business in the State of New York, See Schedule X.

‡ The Rusian business taken over by the Soviet Government has been excluded.

EXHIBIT H—Continued

23.	Premiums paid in advance, including surrender values so applied	1,659,764.04
24.	Unearned interest ($2,692,713.65) and rent ($7,646.99) paid in advance	2,700,360.64
25.	Commissions due to agents on premium notes when paid	544.73
26.	Commissions to agents, due or accrued	12,347.68
27.	"Cost of Collection" on uncollected and deferred premiums, in excess of the loading thereon	0
28.	Salaries, rents, office expenses, bills and accounts due or accrued (including $2,857.49 accrued charges on deposits)	140,116.43
29.	Medical Examiners' fees, $44,426.63; Inspectors' fees, $8,359.43; and legal fees $7,344.18; due or accrued	60,130.24
30.	Estimated amount hereafter payable for Federal, State and other taxes based upon the business of the year of this statement (including $9,558.60 accrued taxes on Interest on Bonds)	4,673,095.56
31.	Advances by officers or others on account of expenses of organization or otherwise	0
32.	Borrowed money, 0, and interest thereon, 0	0
33.	Unpaid dividends to stockholders	0
34.	Dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums	2,184,285.75
35.	Dividends declared on or apportioned to annual dividend policies payable to policy-holders to and including (month) December (day) 31st, 1920, whether contingent upon the payment of renewal premiums or otherwise	13,850,878.00
36.	Dividends declared on or apportioned to deferred dividend policies payable to policy-holders to and including (month) December (day) 31st, 1920	18,194,897.56

37.	Amounts set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 36	88,157,964.00
38.	Reserve, special or surplus funds not included above (give items and amounts separately, and state for what purpose each of said funds is held), Security Fluctuation and General Contingency Fund, $41,493,640.91; Annual Dividend Equalization funds, $2,404,327.00	43,897,967.91
39.	Reserve for future expenses on Paid-up Annual Dividend policies	820,000.00
40.		
41.		
42.	All other liabilities (give items and amounts):	
43.	Due agents under Nylic contracts	3,200.54
44.	Reserve for Nylic contracts	5,201,805.00
45.	Income tax deducted at source, $1,375.76; Reserve for unclaimed receipts, $50,286.44	51,662.20
46.	Guarantee deposits on real estate and rents $750.00; Deposited on contracts for sale of real estate $100,000.00	100,750.00
47.	Capital paid up	0
48.	Unassigned funds (surplus)	0
49.	Total	$961,022,120.05

I.—Capital Stock

1.	Amount of Capital paid up	$0	
2.	Amount of ledger Assets (as per balance), December 31, of previous year	$936,509,948.90	
3.	— crease of Capital during the year	0	
4.	Extended at		$936,509,948.90

II.—Income

5.	First year's premiums on original policies without deduction for commissions or other expenses, less $149,329.61 for first year's reinsurance	$26,039,700.04	
6.	(a) First year's premiums for Total and Permanent Disability Benefits, less $0 for first year's reinsurance	676,181.00	
	(b) For additional Accidental Death Benefits included in life policies, less $0 for first year's reinsurance	539,100.00	
7.	Surrender values applied to pay first year's premiums	0	
8.	First year's premiums on original policies	$27,254,981.04	

9.	Dividends applied to purchase paid-up additions and annuities	3,056,882.40	
10.	Surrender values applied to purchase paid-up insurance and annuities	0	
11.	Consideration for original annuities involving life contingencies	138,146.80	
12.	New premiums		$30,450,010.24
13.	Renewal premiums (in addition to items 15, 17 and 18) without deduction for commissions or other expenses, less $68,789.30 for reinsurance on renewals [including $55,672.42 premiums waived for total and permanent disability]	$101,114,539.87	
14.	(a) Renewal premiums for Total and Permanent Disability Benefits, less $0 for reinsurance on renewals	1,326,077.00	
	(b) For additional Accidental Death Benefits included in life policies, less $0 for reinsurance on renewals	609,513.00	
15.	Dividends applied to pay renewal premiums	8,588,904.29	
16.	Dividends applied to shorten the endowment or premium paying period	208,914.00	
17.	Surrender values applied to pay renewal premiums.	295,266.09	
18.	Renewal premiums for deferred annuities	79,019.83	
19.	Renewal premiums		112,222,234.08
20.	Premium income		$142,672,244.32

EXHIBIT I—Continued

20a.	Premiums reported during year, on U. S. monthly difference lists, to War Risk Insurance Bureau in accordance with the Soldiers' and Sailors' Civil Relief Act		0
20b.	Total, items 5-20A inclusive		$142,672,244.32
21	Consideration for supplementary contracts involving life contingencies		490,476.65
22.	(A) Consideration for supplementary contracts not involving life contingencies		1,434,723.32
23.	Dividends left with the Company to accumulate at interest (including reversionary additions surrendered for cash, $1,054,614.40, left on deposit		2,825,186.44
24.	Ledger assets, other than premiums, received from other companies for assuming their risks		0
25.	Gross interest on mortgage loans, less $17,044.02 accrued interest on mortgages acquired during 1920	8,391,481.00	
26.	Gross interest on collateral loans, per Schedule C	158,660.53	
27.	Gross interest on bonds and dividends on stock, less $454,025.46, accrued interest on bonds acquired during 1920, per Schedule D	26,363,073.66	

28.	Gross interest on premium notes, policy loans or liens, including $1,141.00 interest received on bonds deposited with the Company under the Soldiers' and Sailors' Civil Relief Act	7,621,408.73	
29.	Gross interest on deposits in trust companies and banks, per Schedule E	749,365.54	
30.	Gross interest on other debts due the Company (give items and amounts)		
31.			
32.			
33.	Gross discount on claims paid in advance	9,703.33	
34.	Gross rent from Company's property, including $339,555.77 for Company's occupancy of its own buildings, less $0 interest on incumbrances, per Schedule A	1,041,311.24	
35.	Total interest and rents		44,335,004.03
36.	From other sources (give items and amounts):		
37.	Commissions advanced in previous years now repaid $15,908.88; Policy Fees $2,711.23; Federal Income Tax $680.49; New York State Income		

(A) Including commuted value of instalments or other benefits not payable at the time of death or maturity of endowments, such commuted value being entered also under No. 1 or 2 of Disbursements.

EXHIBIT I—Continued

	Tax $2,295.77; Doubtful debts recovered $1,-987.01; Bonuses received for prepayment or extension of Mortgage Loans $18,306.28; Refund Expense Mortality Investigation $798.00	$42,687.66	
38.	Exchange $1,199,943.34; Remittances not yet adjusted, $59,972.33	1,259,915.67	
39.	Part payment, Sale Law Library, Kansas City	3,388.50	
40.	Policy Loans reinstated, $40,273.78; Branch Office balances reinstated, $39,405.36	79,679.14	
			1,385,670.97
41.	From Agents' balances previously charged off		0
42.	Borrowed money (gross)*		0
43.	Gross profit on sale or maturity of ledger assets, viz.:		
	(a) Real estate, per Schedule A	$67,364.41	
	(b) Bonds, per Schedule D	33,355.92	
	(c) Stocks, per Schedule D	0	
			100,720.33
44.	Gross increase, by adjustment, in book value of ledger assets, viz.:		
	(a) Real estate, per Schedule A	0	
	(b) Bonds, per Schedule D (including $532,752.30 for accrual of discount)	532,752.30	

	(c) Stocks, per Schedule D (received under reorganization)	5,116.00		
	(d) Bond and Mortgage	8,238.76		
			546,107.06	
45.	Total Income			$193,790,133.12
46.	Amount carried forward			$1,130,300,082.02

[fol. 137] 3 New York Life Insurance Company.

Amount brought forward, ... $1,130,300,082.02

III.—Disbursements

1.	(A) For death claims (less $59,466.00 reinsurance), $34,240,568.20; additions, $795,989.64	$35,036,557.84
2.	(A) For matured endowments (less $8,857.03 reinsurance), $23,737,032.68; additions, $106,900.03	23,843,932.71
3.	(a) For total and permanent disability: Premiums waived during the year (less $ 0 reinsurance)	$55,672.42

*Company is at liberty to briefly state transaction, so that explanation can be carried as a footnote in Department report.

(A) Including commuted value of supplementary contracts—see No. 22 of Income.

EXHIBIT I—Continued

	Payments made to policy-holders during the year (less $ 0 reinsurance)	82,265.67	137,938.09
	(b) For additional accidental death benefits (less $ 0 reinsurance)		417,200.83
4.	Net amount paid for losses and matured endments		$59,435,629.47
5.	For annuities involving life contingencies		1,400,300.34
6.	Premium notes and liens voided by lapses, less $ 0 restorations		0
7.	Surrender values paid in cash or applied in liquidation of loans or notes		21,736,845.97
8.	Surrender values applied to pay new premiums (see Income No. 7), $ 0 ; to pay renewal premiums (see Income No. 17), $295,266.09		295,266.09
9.	Surrender values applied to purchase paid-up insurance and annuities (see Income No. 10)		0
10.	Dividends paid to policy-holders in cash or applied in liquidation of loans or notes		18,356,282.70
11.	Dividends applied to pay renewal premiums (see Income No. 15)		8,588,904.29
12.	Dividends applied to shorten the endowment or premium paying period (see Income No. 16)		208,914.00
13.	Dividends applied to purchase paid-up additions and annuities (see Income No. 9)		3,056,882.40

14.	Dividends left with the Company to accumulate at interest (see Income No. 23)	1,770,572.04
	(Total paid policy-holders $114,849,597.30)	
16.	Expense of investigation and settlement of policy claims, including $55,316.65 for legal expense	66,136.34
17.	Paid for claims on supplementary contracts not involving life contingencies	1,283,365.48
18.	Dividends and interest thereon held on deposit surrendered during the year	549,409.15
19.	Paid stockholders for dividends (amount declared during the year, cash $ 0 ; stock, $ 0	0
20.	Commissions to agents (less commission on reinsurance): First year's premiums, $13,208,083.76; renewal premiums, $3,628,088.04; annuities (original), $9,123.31; (renewal), $2,119.37	16,847,414.48
21.	Commuted renewal commissions	0
22.	Compensation of managers and agents not paid by commission for services in obtaining new insurance	26,038.44
23.	Agency supervision and traveling expenses of supervisors (except compensation for Home Office supervision)	1,160,196.44
24.	Branch Office expenses, including salaries of managers and clerks not included in item 22	2,162,255.53
25.	Medical examiners' fees, $867,709.27; inspection of risks, $218,053.34	1,085,762.61
26.	Salaries and all other compensation of officers, directors, trustees and Home Office employees	3,406,596.15

EXHIBIT I—Continued

27.	Rent, including $339,555.77 for Company's occupancy of its own buildings, less $8,683.70 received under sublease		746,709.60
28.	Advertising, $69,837.86; printing and stationery, $572,942.46; postage, telegraph, telephone and express $307,236.45; exchange $ 0		950,016.77
29.	Legal expense not included in item 16		19,335.06
30.	Furniture, fixtures and safes		276,260.06
31.	Repairs and expenses (other than taxes) on real estate		394,795.93
32.	Taxes on real estate		201,380.58
33.	State taxes on premiums		1,684,262.06
34.	Insurance Department licenses and fees		29,490.22
35.	Federal Taxes		2,028,434.87
36.	All other licenses, fees and taxes (give items and amounts):		
37.	Local licenses and taxes, $60,160.97; tax on policy reserves, $64,580.89	$124,741.86	
38.	Miscellaneous taxes (including $16,868.06 tax on interest receipts)	64,664.33	
			189,406.19
39.	Other disbursements (give items and amounts):		
40.	Paid agents under Nylic contracts	$1,082,319.48	
41.	Doubtful debts marked off	17,622.92	
42.	Books, Papers and Subscriptions, $16,009.65; Special Inspection Reports, $4,486.62; Lunch for Com-		

	pany's employees, $204,444.47; Miscellaneous Items of Expense, $27,371.19; Legislative and Departmental Expenses $4,754.05; Traveling Expenses, $24,482.15; Examination and Audits of the Company's accounts, $6,418.58; Foodstuffs sent to European Department Employees, $8,977.30; Examination by New York State Insurance Department, $10,878.13; Association of Life Insurance Presidents, $13,569.96	321,392.10	
43.	Miscellaneous Interest Payments, $70,949.05; Bank Charges, $12,593.77; Custody of and Insurance on Securities, $19,798.78; Premiums on Fidelity Bonds, $8,049.90; Real Estate Commissions and Fees, $8,972.50; Real Estate and Mortgage Department Expenses, $13,084.73; National Association of Owners of Railroad Securities, $17,033.82	150,482.55	
			1,571,817.05
43½	Adjustment arising from the adoption of a lower standard for conversion of Foreign Currencies*		37,502,693.44
44.	Agents' balances charged off		0
45.	Borrowed money repaid (gross)		0

*This item is not a disbursement but is necessary because in 1920 the Company adopted a lower standard for conversion of certain foreign currencies, resulting in a decrease in dollars in its Foreign Assets and correspondingly in its Foreign Liabilities.

EXHIBIT I—Continued

46.	Interest on borrowed money		0	
47.	Gross loss on sale or maturity of ledger assets, viz.:			
	(a) Real Estate, per Schedule A	0		
	(b) Bonds, per Schedule D	$967,576.12		
	(c) Stocks, per schedule D	0		
			967,576.12	
48.	Gross decrease, adjustment, in book value of ledger, viz.:			
	(a) Real Estate, per Schedule A	0		
	(b) Bonds per Schedule D (including $301,839.88 for amortization of premiums)	2,946,863.94		
	(c) Stocks, per Schedule D	25,580.53		
	(d) Bond and Mortgage	183.64		
			2,972,628.11	
49.	Total Disbursements			$190,971,577.98
50.	Balance			$939,328,504.04

[fol. 138] 4 Annual Statement of the New York Life Insurance Company

IV.—Ledger Assets

1.	Book value of Real Estate (less $ 0 incumbrances) per Schedule A		$8,407,481.00

2.	Mortgage Loans on Real Estate, per Schedule B, first liens, $164,796,225.60; other than first liens, $ 0		164,796,225.60
3.	Loans secured by pledge of bonds, stocks or other collateral per Schedule C		6,565,500.00
3A.	Premiums reported on U. S. monthly difference lists, to War Risk Insurance Bureau, in accordance with the Soldiers' and Sailors' Civil Relief Act		1,186.72
4.	Loans made to policy-holders on this Company's policies assigned as collateral		142,803,763.89
5.	Premium Notes on policies in force, of which $ 0 is for first year's premiums		4,605,483.18
6.	Book value of bonds, $600,881,854.55 and stocks, $104,146.00, per Schedule D		600,986,000.55
7.	Cash in Company's office	$3,109.28	
8.	Deposits in trust companies and banks not on interest, per Schedule E	1,836,273.72	
9.	Deposits in trust companies and banks, on interest, per Schedule E	8,153,482.33	
			9,992,865.33
10.	Bills receivable, $544.50; agents' balances (debit, $ 0 , credit, $ 0); net, $ 0 Branch Office debit balances, $98,115.56; credit, $479,326.48; net, $18,789.08		19,333.58
11.	Cash in Company's Branch Offices, $76,805.58; Cash in Transit, $983,858.61		1,060,664.19
12.	Total Ledger Assets, as per "balance" on page 3		$939,328,504.04

Exhibit I—Continued

Non-ledger Assets

13.	Interest due, $91,598.05 and accrued, $2,478,115.38, on Mortgages	2,569,713.43	
14.	Interest due, $343,206.02 and accrued, $7,830,400.07 on Bonds, per Schedule D, Part 1	8,173,606.09	
15.	Interest due, $ 0 and accrued, $35,281.18 on Collateral Loans, per Schedule C, part 1	35,281.18	
16.	Interest due, $ 0 and accrued, $1,218,182.51 on Premium Notes, Policy Loans or Liens	1,218,182.51	
17.	Interest due, $ and accrued, $ on other Assets (give items and amounts:		
18.	Interest due, $59,884.00 and accrued, $22,369.53 on Bank Balances	82,253.53	
19.			
20.	Rents due, $8,561.51 and accrued, $ 0 on Company's property or lease	8,561.51	
21.	Total interest and rents due and accrued		12,087,598.25
22.	Market value of Real Estate over book value, per Schedule A		0
23.	Market value (not including interest in item 14), of Bonds and Stocks over book value, per Schedule D, viz.: Bonds and Stocks not subject to amortization		1,985,244.72
24.	Due from other companies for losses or claims on policies of this Company, reinsured		98,665.00

		(1) New Business (Paid for Basis)	(2) Renewals	
25.	Gross premiums due and unreported on policies in force December 31, 1920 (less reinsurance premiums)	$293,026.98	$7,939,785.35	
26.	Gross deferred premiums on policies in force December 31, 1920 (less reinsurance premiums)	1,748,813.00	8,300,655.00	
27.	Total	$2,041,839.98	$16,240,440.35	
28.	Deduct loading, 25%	510,460.00	4,060,110.09	
29.	Net amount of uncollected and deferred premiums	$1,531,379.98	$12,180,330.26	13,711,710.24
30.	All other Assets (give items and amounts):			
31.				
32.				
33.				
34.				
35.	Gross Assets			$967,211,722.25
	Deduct Assets not Admitted			
36.	Company's stock owned, $ 0 ; loans on, $ 0		$0	
37.	Supplies, stationery, printed matter, $ 0 , furniture, fixtures, and safes $ 0		0	

Exhibit I—Continued

38.	Commuted commissions, $ 0 ; agents' debit balances, gross, $ 0		0	
39.	Cash advanced to or in the hands of officers or agents		0	
40.	Loans on personal security, endorsed or not, $ 0 ; bills receivable, $544.50		544.50	
41.	Premium notes, policy loans and other policy assets in excess of net value and of other policy liabilities on individual policies		0	
42.	Overdue and accrued interest on Bonds in default		0	
43.	Book value of real estate over market value	$0		
44.	Book value of bonds and stocks over market value, viz.: Bonds and Stocks not subject to amortization	0		
45.	Book value of other Ledger Assets over market value, viz.:	0		
			0	
45A.	Branch Office debit balances		498,115.56	
45B.	Reinsurance due from Foreign Companies not transacting business in the State of New York		48,665.00	
				547,325.06
46.	Total Admitted Assets			$966,664,397.19

I$_5$

Net present value of all the outstanding policies in force on the 31st day of December, 1920, as computed by the Insurance Department of the State of New York on the following tables of mortality and rates of interest, viz.:			
1. Actuaries' table at per cent. on*	0		
Same for dividend additions	0		
			0
2. American Experience table at 3 per cent. on* all insurance except those specified under 4	$678,382,115.00		
Same for dividend additions	10,977,490.00		
			$689,359,605.00
3. American Experience table at per cent. on*	0		
Same for dividend additions	0		
			0
4. Other tables and rates, viz.:*			
Double American Experience table at 3 per cent. on policies issued prior to 1907 on impaired lives	$34,071,089.00		
Same for dividend additions	208,093.00		
			34,279,182.00

* State definitely the dates of issue and class of policies covered by each basis of valuation.

EXHIBIT I—Continued

Sesqui American Experience table at 3 per cent. on semi-tropical insurances and on policies issued prior to 1907 on partially impaired lives	$51,281,869.00		
Same for dividend additions	244,108.00		
		51,525,977.00	
5. Net present value of annuities (including those in reduction of premiums). Give tables and rates of interest, viz.:			
McClintock's Annuity table, 3 per cent		15,613,711.00	
Total		$790,778,475.00	
6. Deduct net value of risks of this Company reinsured in other solvent companies†	$96,391.00		
6½. Adjustment arising from the adoption of a lower standard for conversion of Foreign Currencies	34,691,224.00		
7. Net Reserve (Paid-for basis)		34,787,615.00	
			$755,990,860.00
8. Extra reserve for total and permanent disability benefits $2,286,592.00; and for additional accidental death benefits $740,312.00, included in life policies			3,026,904.00
9. Present value of amounts not yet due on supplementary contracts not involving life contingencies, computed by the Company			6,763,008.59

10.	Present value of amounts incurred but not yet due for total and permanent disability benefits		863,934.00
11.	Liability on policies canceled and not included in "net reserve" upon which a surrender value or reinstatement may be demanded		517,943.70
12.	Claims for Death-Losses due and unpaid	$0	
13.	Claims for Death-Losses in process of adjustment, or adjusted and not due	2,008,709.35	
14.	Claims for Death-Losses reported for which no proofs have been received	3,546,669.27	
15.	Reserve for net Death-Losses incurred but unreported	2,250,000.00	
16.	Claims for Matured Endowments due and unpaid	1,512,594.56	
17.	Claims for Death-Losses and other Policy Claims resisted	392,937.82	
18.	Claims for total and permanent disability benefits $208,499.00; and for additional accidental death benefits, $64,000.00, including $10,500.00 resisted	272,499.00	
19.	Due and unpaid on Annuity Claims involving life contingencies	136,077.14	
20.	Total Policy Claims		10,119,487.14
21.	Due and unpaid on supplementary contracts not involving life contingencies		946.74
22.	Dividends left with the Company to accumulate at interest and accrued interest thereon		6,247,821.30
23.	Premiums paid in advance, including surrender values so applied		1,662,778.06
24.	Unearned interest ($2,570,283.89) and rent ($258.08) paid in advance		2,570,541.97

† The net value of risks reinsured in British and Canadian Companies $959,620 is not included, as these companies are not doing business in the State of New York, See Schedule X.

Exhibit I—Continued

25.	Commissions due to agents on premium notes when paid	2,004.09
26.	Commissions to agents, due or accrued	14,107.06
27.	"Cost of Collection" on uncollected and deferred premiums, in excess of the loading thereon	0
28.	Salaries, rents, office expenses, bills and accounts due or accrued (including $1,957.24 accrued charges on deposits)	174,486.38
29.	Medical Examiners' fees, $51,296.54; Inspectors' fees, $41.00; and legal fees, $5,409.31; due or accrued	56,746.85
30.	Estimated amount payable for Federal, State and other taxes based upon the business of the year of this statement (including $19,294.42 accrued taxes on Interest on Bonds)	6,917,026.34
31.	Advances by officers or others on account of expenses of organization or otherwise	0
32.	Borrowed money, $ 0, and interest thereon, $ 0	0
33.	Unpaid dividends to stockholders	0
34.	Dividends or other profits due policy-holders, including those contingent on payment of outstanding and deferred premiums	2,039,587.30
35.	Dividends declared on or apportioned to annual dividend policies payable to policy-holders to and including (month) December (day) 31st, 1921, whether contingent upon the payment of renewal premiums or otherwise	16,431,339.00
36.	Dividends declared on or apportioned to deferred dividend policies payable to policy-holders to and including (month) December (day) 31st, 1921	21,015,315.87

37.	Amounts set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon deferred dividend policies not included in Item 36	76,176,646.00
38.	Reserve, special or surplus funds not included above (give items and amounts separately, and state for what purpose each of said funds is held), Security Fluctuation and General Contingency fund, $47,262,456.96; Annual Dividend Equalization funds, $1,969,937.00	49,232,393.96
39.	Reserve for future expenses on Paid-up Annual Dividend policies	870,000.00
40.		
41.		
42.	All other liabilities (give items and amounts):	
43.	Due agents under Nylic contracts	1,433.15
44.	Reserve for Nylic contracts	5,753,193.00
45.	Federal and New York State Income tax deducted at source, $4,352.02; Reserve for unclaimed receipts, $110,790.67	115,142.69
46.	Guarantee deposits on real estate and rents $750.00; Deposited on contracts for sale of real estate $100,000.00	100,750.00
47.	Capital paid up	0
48.	Unassigned funds (surplus)	0
49.	Total	$966,664,397.19

L

[fol. 140] IN UNITED STATES DISTRICT COURT

STIPULATION AND ORDER SETTLING BILL OF EXCEPTIONS

It is stipulated that the foregoing bill of exceptions contains all the facts and all the evidence introduced or offered upon the trial of said cause, and may be settled and ordered to be filed and annexed to the judgment roll herein.

James H. McIntosh, Attorney for Plaintiff.
Charles H. Tuttle, United States District Attorney, Attorney for Defendant.

New York, July 1, 1929.

And now, in furtherance of justice and that right may be done, said plaintiff tenders and presents the foregoing agreed statement of facts as a bill of exceptions, and prays that the same may be settled, allowed, signed and sealed by the Court and made a part of the record in said cause; and forasmuch as said bill of exceptions contains all the facts and all the evidence introduced or offered upon the trial of said cause, the same is settled, signed, sealed and allowed by me accordingly and ordered to be made a part of the record in said cause, this 1st day of July, 1929.

Julian W. Mack, Judge.

[fol. 141] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

Now comes New York Life Insurance Company, plaintiff herein, and says that on the 27th day of June, 1929, this Court entered a judgment herein dismissing the First, Second and Third Causes of Action, respectively, in the plaintiff's complaint, and that by said judgment certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear from the Assignment of Errors which is filed with this petition.

Wherefore, this plaintiff prays an appeal from said judgment to the United States Circuit Court of Appeals for the Second Circuit for the corrections of the errors so com-

plained of, and for allowance of said appeal and leave to prosecute the same, and a reversal of said judgment, and that a transcript of the record of the proceedings and pa-
[fol. 142] pers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals.

James H. McIntosh, Attorney for Plaintiff, Office and P. O. Address, 120 Broadway, New York City, N. Y.

Dated, New York, June 27th, 1929.

In United States District Court

[Title omitted]

Notice of Appeal

To the above named Defendant:

You will please take notice that New York Life Insurance Company, the plaintiff herein, hereby appeals to the United
[fol. 143] States Circuit Court of Appeals for the Second Circuit from so much of the judgment of the United States District Court for the Southern District of New York made herein on the 27th day of June, 1929, as dismisses the plaintiff's complaint with respect to its First, Second and Third Causes of Action, and on said day entered and docketed in the office of the Clerk of said United States District Court in favor of the defendant and against the plaintiff with respect to said First, Second and Third Causes of action.

James H. McIntosh, Attorney for Plaintiff, Office & P. O. Address, 120 Broadway, Borough of Manhattan, City of New York, N. Y.

Dated, New York, June 27th, 1929.

[fol. 144] In United States District Court

[Title omitted]

Assignment of Errors

Now comes the plaintiff, New York Life Insurance Company, by James H. McIntosh, its Attorney, and says that

in the record and proceedings in the above entitled cause there is manifest error which occurred at the trial of said cause, upon which it will rely in its prosecution of its appeal in the above entitled cause in this, to wit:

First: The Court erred in finding and adjudging that that plaintiff was liable for the payment of a capital stock tax for the year ending June 30, 1919.

Second: The Court erred in not deducting from the market value as of December 31, 1917, of the plaintiff's total admitted assets such deposits or reserve funds as the plain-[fol. 145] tiff was required by contract to hold for apportionment among and payment to its policyholders, to wit, the sum of $107,041,778.

Third: The Court erred in not deducting from the market value as of December 31, 1917, of the plaintiff's total admitted assets the dividends declared on deferred dividend policies and payable absolutely, to wit, the sum of $14,123,549.64.

Fourth: The Court erred in not deducting from the market value as of December 31, 1917, of the plaintiff's total admitted assets the dividends declared on annual dividend policies and payable absolutely, to wit, the sum of $12,437,514.

Fifth: The Court erred in not finding and adjudging that the plaintiff was entitled to refund of the entire capital stock tax paid by it for the period ending June 30, 1919.

Sixth: The Court erred in dismissing the plaintiff's complaint as to its First Cause of Action and in adjudging that the plaintiff was not entitled to the refund of any sum on account of said capital stock tax paid for the year ending June 30, 1919.

Seventh: The Court erred in finding and adjudging that the plaintiff was liable for the payment of a capital stock tax for the year ending June 30, 1920.

Eighth: The Court erred in not deducting from the market value as of December 31, 1918, of the plaintiff's total [fol. 146] admitted assets such deposits or reserve funds as the plaintiff was required by contract to hold for apportionment among and payment to its policyholders, to wit, the sum of $100,893,328.

Ninth: The Court erred in not deducting from the market value as of December 31, 1918, of the plaintiff's total admitted assets the dividends declared on deferred dividend policies and payable absolutely, to wit, the sum of $19,000,738.13.

Tenth: The Court erred in not deducting from the market value as of December 31, 1918, of the plaintiff's total admitted assets the dividends declared on annual dividend policies and payable absolutely, to wit, the sum of $13,636,876.

Eleventh: The Court erred in not finding and adjudging that the plaintiff was entitled to refund of the entire capital stock tax paid by it for the period ending June 30, 1920.

Twelfth: The Court erred in dismissing the plaintiff's complaint as to its Second Cause of Action and in adjudging that the plaintiff was not entitled to the refund of any sum on account of said capital stock tax paid for the year ending June 30, 1920.

Thirteenth: The Court erred in finding and adjudging that the plaintiff was liable for the payment of a capital stock tax for the year ending June 30, 1921.

[fol. 147] Fourteenth: The Court erred in not deducting from the market value as of December 31, 1919, of the plaintiff's total admitted assets such deposits or reserve funds as the plaintiff was required by contract to hold for apportionment among and payment to its policyholders, to wit, the sum of $88,157,964.

Fifteenth: The Court erred in not deducting from the market value as of December 31, 1919, of the plaintiff's total admitted assets the dividends declared on deferred dividend policies and payable absolutely, to wit, the sum of $18,194,897.56.

Sixteenth: The Court erred in not deducting from the market value as of December 31, 1919, of the plaintiff's total admitted assets the dividends declared on annual dividend policies and payable absolutely, to wit, the sum of $13,850,878.

Seventeenth: The Court erred in not finding and adjudging that the plaintiff was entitled to refund of the entire capital stock tax paid by it for the period ending June 30, 1921.

Eighteenth: The Court erred in dismissing the plaintiff's complaint as to its Third Cause of Action and in adjudging that the plaintiff was not entitled to the refund of any sum on account of said capital stock tax paid for the year ending June 30, 1921.

Wherefore the plaintiff prays that so much of said judgment of the United States District Court for the Southern [fol. 148] District of New York as dismisses the plaintiff's complaint with respect to its First, Second and Third Causes of Action and each of them for the errors aforesaid and for other errors in the record and proceedings herein may be reversed and held for naught, and that said plaintiff may be restored to all things which it has lost by reason of said judgment with respect of its said First, Second and Third Causes of Action.

James H. McIntosh, Attorney for Plaintiff, Office and P. O. Address, 120 Broadway, New York City, N. Y.

Dated, New York, June 27, 1929.

[fol. 149] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—June 27, 1929

A judgment dismissing the plaintiff's complaint with respect to the plaintiff's First, Second and Third Causes of Action having been entered in the office of the clerk of this court on the 27th day of June, 1929, and the plaintiff having appealed from this judgment to the United States Circuit Court of Appeals for the Second Circuit, it is

[fol. 150] Ordered that said appeal be and the same is hereby allowed, and that execution and all proceedings to enforce said judgment be stayed pending the hearing and

determination of said appeal and the coming down to this court of the mandate of the United States Circuit Court of Appeals for the Second Circuit upon the filing by the plaintiff of a cost and supersedeas bond for the sum of Two Hundred and Fifty Dollars ($250) approved by a judge of this court.

Julian W. Mack, U. S. C. J.

Such bond conditioned as required by law filed by the plaintiff July 1, 1929; and approved by Circuit Judge Mack but not printed herein.

[fol. 151] Citation in usual form showing service on Charles H. Tuttle omitted in printing.

[fol. 152] In United States District Court

[Title omitted]

Stipulation re Transcript

It is hereby stipulated and agreed, that the foregoing is a true copy of the record, bill of exceptions, and all proceedings in the above entitled cause as agreed on by the parties.

James H. McIntosh, Attorney for Plaintiff. Charles H. Tuttle, United States Attorney, Attorney for Defendant.

Dated, July —, 1929.

[fol. 153] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 154] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

NEW YORK LIFE INSURANCE COMPANY, Plaintiff-Appellee,

against

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York, Defendant-Appellant

STATEMENT RE CROSS APPEAL

This is a cross appeal on behalf of the defendant-appellant, the plaintiff-appellant having taken an appeal on June 27, 1929, Calendar No. 129. This suit was commenced April 28, 1923. The names of the original parties were New York Life Insurance Company, plaintiff, and Frank K. Bowers, Collector of Internal Revenue for the Second District of New York, defendant, and no change has taken place in the parties. The plaintiff's complaint was filed April 28, 1923, and the defendant's answer was filed January 14, 1924. Trial was had June 2, 1928, before the Hon. Julian W. Mack, Circuit Judge, without a jury, jury having been waived in writing. No question was referred to a Commissioner, Master or Referee. The Court decided the case May 28, 1929, and final judgment was entered June 27, 1929, and the appeal on behalf of the defendant was taken September 23, 1929.

[fol. 155] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION AND ORDER ALLOWING APPEAL

Now comes the defendant, Frank K. Bowers, Collector of Internal Revenue, and says that on the 27th day of June, 1929, the Court entered judgment herein against him upon the alleged fourth cause of action in plaintiff's complaint, and that by said judgment certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear from the assignments of error filed with this petition.

Wherefore the defendant prays an appeal from said judgment to the Circuit Court of Appeals for the Second Circuit for the correction of the errors so complained of, and for the allowance of said appeal and leave to prosecute the same and a reversal of said judgment insofar as it directs judgment against him, and that a transcript of record of the proceedings and papers in this cause duly authenticated be forwarded to said Circuit Court of Ap-
[fol. 156] peals.

Charles H. Tuttle, United States Attorney, Southern District of New York, Office and P. O. Address, U. S. Courts and Old P. O. Building, Borough of Manhattan, City of New York.

Dated, New York, N. Y., September 23, 1929.

The above appeal as prayed for is hereby allowed.
Woolsey, United States District Judge.

[fol. 157] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the defendant by Charles H. Tuttle, United States Attorney, his attorney, and says that in the record and proceedings in the above-entitled cause there is manifest error which occurred at the trial of said cause upon which he will rely in the prosecution of his appeal in the above-entitled cause in this, to wit:

First. The Court erred in failing to dismiss the alleged Fourth cause of action set forth in plaintiff's complaint.

Second. The Court erred in granting judgment in favor of the plaintiff against the defendant upon said alleged Fourth cause of action.

Third. The Court erred in failing to dismiss the complaint in its entirety.

Fourth. The Court erred in directing judgment against the defendant in the sum of $94,134.00.

[fol. 158] Wherefore defendant prays that so much of said judgment as fails to dismiss the plaintiff's complaint with respect to its alleged Fourth cause of action; and grants judgment against the defendant upon the said alleged Fourth cause of action, may be reversed and held for naught and that said defendant may be restored to all things which he has lost by reason of said judgment.

Charles H. Tuttle, United States Attorney for the Southern District of New York, Office and P. O. Address: U. S. Courts and Old P. O. Bldg., Borough of Manhattan, City of New York.

Dated, New York, N. Y., September 23, 1929.

[fol. 159] In United States District Court

[Title omitted]

Order as to Bill of Exceptions—Filed July 12, 1929

Upon reading and filing the annexed consent and on motion of Charles H. Tuttle, United States Attorney for the Southern District of New York, attorney for the defendant, it is

Ordered that the bill of exceptions filed herein on the 1st day of July, 1929, be deemed as filed on behalf of both plaintiff and defendant.

J. W. Mack, U. S. C. J.

Dated, New York, July 11th, 1929.

Consented to without further notice.

James H. McIntosh, Attorney for Plaintiff. Charles H. Tuttle, United States Attorney, Attorney for Defendant.

Dated, New York, July 11, 1929.

[fol. 160] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER RE PRINTING RECORD ON CROSS-APPEAL

The plaintiff-appellant herein having caused the record on appeal to be filed in this Court which record contains all pleadings, papers, bill of exceptions and exhibits necessary on the argument of said appeal, and the defendant having taken a cross appeal upon the same pleadings, papers, bill of exceptions and exhibits, now upon the annexed consent and on motion of Charles H. Tuttle, United States Attorney for the defendant, it is

Ordered that the defendant-appellant be and he hereby is permitted to exclude from his said record on appeal all pleadings, papers, bill of exceptions and exhibits included in the record on appeal filed by the plaintiff-appellant herein.

[fol. 161] Manton, U. S. C. J.

Dated, October 8th, 1929.

The entry of the above order is hereby consented to.

James H. McIntosh, Atty. for Plaintiff.

Dated, Oct. 3, 1929.

[fol. 162] Citation in usual form omitted in printing.

[fol. 163] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

James H. McIntosh, Attorney for Plaintiff. Charles H. Tuttle, United States Attorney, Attorney for Defendant.

Dated, October 16th, 1929.

[fol. 164] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 165] In United States Circuit Court of Appeals, Second Circuit

New York Life Insurance Company, Appellant and Appellee,

against

Frank K. Bowers, Collector of Internal Revenue for the Second District of the State of New York, Appellee and Appellant

Before L. Hand, Augustus N. Hand and Chase, Circuit Judges

Appeal by both parties from a judgment for the plaintiff of the District Court for the Southern District of New York in an action at law to recover back capital stock taxes paid by the plaintiff during the years ending June 30, 1919, 1920, 1921, 1922. The case was tried to the court upon an agreed statement of facts.

James H. McIntosh for the plaintiff
Samuel C. Coleman for the defendant.

Opinion

L. Hand, Circuit Judge:

The plaintiff is a large mutual life insurance company with its principal place of business in New York. In common with other such institutions it had before 1906 issued policies in consideration of equal yearly premiums, the accumulated dividends from which it retained for a fixed period, and divided among those who survived and had kept their policies alive when the period expired. These are semi-Tontine policies. Besides these it did the [fol. 166] ordinary business of life insurance under which also the insured paid equal yearly premiums, in consideration of a payment should he die within a given period, or a sum at the end of the period if he survived; or merely of a payment whenever he did die. Upon such policies the insured receives a dividend in the year following the payment of each premium. To provide against contingencies all premiums are computed at more than the estimated

cost of the insurance, and at the end of each year there is a remainder, called a "dividend", to which under his contract the insured is entitled, either absolutely, or, in the case of semi-Tontine policies, contingently upon his survival. In calculating the cost of insurance the insurer not only includes the actual losses which occur during the year, but "reserves", determined on an actuarial basis and universally required by statute. These are to accumulate sufficient sums to pay future losses, and thus to keep the class for any year actuarially solvent as a whole. Besides these, the necessary expenses of the business must be paid.

The tax in question was levied by virtue of § 1000 (c) of the Revenue Act of 1918, which provided that in the case of mutual companies it should be based upon "the sum of its surplus and contingent reserves maintained for the general use of the business, and any reserves the net additions to which are included under the provisions of Title II, as of the close of the preceding accounting period, used by such company for the purpose of making its income tax return.". During the years in question in its returns made to the New York superintendent of insur- [fol. 167] ance, the plaintiff carried three items, numbered thirty-five, thirty-six and thirty-seven respectively, which are the subject of this action. The first was designated "Dividends declared on, or apportioned to, annual dividend policies payable to policy holders to and including December 31," (of the following year) "whether contingent upon the payment of renewal premiums or otherwise." This was the amount to be declared by the plaintiff, as the remainder or profit upon those premiums received during the past year upon insurance other than semi-Tontine, after paying any losses in that year, setting aside the necessary "reserves", and deducting the proper share of the expenses.

Item thirty-six read as follows, "Dividends declared on, or apportioned to, deferred dividend policies payable to policy holders to and including December 31," of the following year. This represented the accumulation of all dividends throughout the existence of such policies, including the year in question, which would be paid in the following year upon the semi-Tontine policies which fell due in that year. Item thirty-seven was like item thirty-

six, exeept that it represented the accumulated dividends throughout their existence of all semi-Tontine policies which would fall due at some time later than the following year. In the case of all such dividends they were declared by resolution of the plaintiff's board of directors during the month of January in the following year.

In estimating the tax in question the Commissioner included all of Items thirty-five, thirty-six and thirty-seven for each current year, and this is the source of the plain- [fol. 168] tiff's complaint. It contends that the phrase, "surplus and contingent reserves maintained for the general use of the business", includes only those sums, the result of the general operation of the business, which have accumulated above legal reserves and declared dividends. The district court held that, as the dividends were not set apart, but remained in the plaintiff's business for all purposes, the items were "maintained for the general purposes of the business", and that they were part of "the surplus and contingent reserves."

In the case of ordinary stock companies the statute, (§ 1000 (a) (1).), levied a tax upon the value of the capital stock of the corporation, including its surplus and undivided profits, and this would ordinarily be reached merely by subtracting the liabilities from the assets. To insurance companies of any sort this was inappropriate. During the earlier years of a group of coeval policies the premiums are not enough to answer the payments, treated as absolute, though future, liabilities; it is only as the policies mature that the accumulated premiums become large enough to answer the later payments. It was therefore necessary to adopt some other rule. The law of 1916 taxed only stock insurance companies, and excluded from capital "such deposits and reserve funds as they are required by law or contract to maintain or hold for the protection of, or payment to, or apportionment among, policy holders." It apparently presupposed that policies were not liabilities, though it did not say so. In other respects the capital was [fol. 169] to be calculated like that of an ordinary business stock company. A question might arise whether "dividends", annual or deferred, were included within this exemption, but we have not that before us, except indirectly, because in 1918, while section 1000 (b) was retained, Congress by section 1000 (c) expressly provided for mutual

companies. In these, though all the policy holders are collectively a debtor to each one, all are also members of the company, and therefore collective owners of any profits which it may make. While it is true that each policy provides for the declaration of those profits in the form of dividends, it is rather as a charter,—also a contract,—provides for the declaration of dividends to shareholders in a stock company. The policy holders are therefore at once associates in the business of life insurance, as to which they are investors, and creditors of the group as a whole, (Penn State Mutual Ins. Co. v. Lederer, 252 U. S. 523).

When Congress in 1918 undertook to supply the casus omissus left in 1916, it defined the amount to be taxed as a "sum" of two factors, (§ 1000 (c)). The first was the "surplus and contingent reserves maintained for the general use of the business"; the second, those "reserves the net additions to which" were included in the income tax of the company. We agree that "dividends", whether annual or accumulated, should not be classed as "reserves", a word which has an accepted meaning in insurance, and which covers primarily those funds required by law, though [fol. 170] in some cases added funds required by contract. Therefore the items in suit are not included within the second factor of the "sum" to be taxed. We think that they are part of the surplus, and our reasons are that they are more nearly profits than the other sums which the section included. It expressly taxed "contingent reserves", that is, limited funds accumulated at the option of the insurer out of abundant caution, (e. g., § 37 of the N. Y. Insurance Law). These are withdrawn from what would otherwise be declared as dividends; they are funds temporarily at any rate taken out of profits and devoted to the insurer's contract obligations. Also it taxed those "reserves", stricti juris, whose net additions entered into the income tax. Section 234 (10) allowed insurance companies to deduct from their gross income the "net additions required by law to be made * * * to reserve funds." Additions to all other "reserves" were taxed as income, though they were such in the most limited sense. The second factor of the "sum" defined in § 1000 (c) thus comprehended any "reserves" required by contract as contrasted with those "required by law."

It appears to us incredible that Congress should have meant to exempt dividends which are taxable as income and to include both "contingent reserves" and those other reserves which we have just considered. The general pur-
[fol. 171] pose appears to have been to make the test whether the taxed funds were made up of sums whose annual accretions were subject to the income tax, no matter how they were allocated in the corporate accounts. At any rate as between dividends and such "reserves", contingent or absolute, the preference in exemption would naturally be for the second, and a tax which covers them must cover the first. Furthermore, whatever may be said as to taxing any "reserves" whatever, to tax the dividends of a mutual company is at least consistent with the distinction between its obligation as insurer and the profit of the members as a group. True, there can be no profits save as they come from premiums, and dividends are in substance a return pro tanto of what has come out of their pockets. Nevertheless the group, as such, does make profits or losses, and there is more than a formal reason for treating separately what it may engage to pay according to the tenor of its contracts, and what it distributes, even though those very contracts stipulate that there shall be a distribution.

That this results in inequality between mutual and stock companies is true. As to "reserves" there can be no doubt; the stock companies escape all such taxes, the mutual do not, unless they hold no more than those "required by law." As to dividends the inequality is not so clear. To be sure they would seem to fall within the phrase, "such deposits * * * as they are required by * * * con-
[fol. 172] tract to maintain for * * * apportionment among policy holders," especially when "apportionment" is contrasted with "protection" and "payment". Yet it is at least open to argument that dividends, though the policy may secure them, are not "required by contract", and that the same distinction was intended between payments as such and profits, as appeals in Section 1000 (c). For it is possible to regard the policy holders even of a stock company as also associates in the enterprise, and perhaps that is the juster view. But even if it is not, and if the dividends of such policy holders are exempt, Congress may have intended to insist upon the legal distinc-

tion between them and shareholders. Whatever the resulting inequalities, § 1000 (c) was certainly intended to be the sole measure of the tax on mutual companies, and its language bears evidence of being deliberately chosen. We cannot temper the result without disregarding its plain sense.

Finally, unless we are to suppose that mutual companies were taxed on dividends, there was very little which could be reached at all. Not all such companies have "contingent reserves" and the "surplus", after the deduction of reserves of all sorts and dividends, may be, as here it would be, a very small matter, or nothing at all. The phrase, "maintained for the general use of the business", might indeed lend color to the plaintiff's position, were it not affixed not only to "surplus", but to "contingent reserves" as well. It is however impossible to see in what [fol. 173] sense such reserves are maintained for the general use of the business which does not equally apply to dividends. If the clause means that the surplus must be unallocated for any purposes, it is not appropriate to "contingent reserves."

There remains the second question raised by the appeals, which is whether the taxes levied for the years beginning July 1, 1920, and July 1, 1921, had the support of any statute. Section 1000 (a) (1) of the Act of 1918 levied a "special excise tax with respect to carrying on or doing business", upon the "fair average value" of the capital "for the preceding year ending June 30", and sub-division c. provided that it should not apply "to any corporation which was not engaged in business * * * during the preceding year." The district court decided that the tax was levied for the preceding year, but that that due July 1, 1921, was in force notwithstanding the Act of 1921. The tax for the following year was not however in force, because the statute had been repealed before July 1, 1922. Each side appeals from this ruling.

As to the fourth year,—July 1, 1921 to June 30, 1922,—we have no doubt. If the tax is levied for the preceding year it is conceded that by § 1400 (a) of the Act of 1921, § 1000 of the Act of 1918 was repealed to take effect as of January 1, 1922, and there was therefore no statute in effect in the following July. We think that the same is true, even though the tax was payable in advance, as the

defendant maintains. Section 1400 (b) of the Act of 1921 provided: "In case of any tax imposed by any part of the [fol. 174] Revenue Act of 1918 repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect." Section 243 of the Act of 1921 imposed "in lieu of the taxes imposed by sections 236 and 1000" a tax upon "the net income of every life insurance company" "for the calendar year 1921" and thereafter. Section 1000 of the Act of 1921 reënacted the capital stock tax of § 1000 of the Act of 1918 which was to be "in lieu of" it. It did not comprise insurance companies. While the words, "§ 1000", in § 243 of 1921 refer to § 1000 of that act, and verbally the income tax was therefore only in lieu of the capital stock tax of 1921, it was nevertheless also "in lieu of" the tax of 1918, because it took the place of the capital stock tax of 1921, which in turn took the place of the preceding tax of 1918. Hence the passage quoted from § 1400 (b) applied to it, and the tax in suit could not be levied on July 1, 1921, even though payable in advance. The income tax levied by § 243 of the act of 1921,—"the corresponding tax",—had already "taken effect" on that day; it included the calendar year 1921, although collected only in 1922. It could not have been the intent of Congress to impose two taxes for the period between July 1, 1921, and June 30, 1922, when one was "in lieu" of the other. Since the Act of 1921 was enacted after July 1, 1921, this indeed results in the remission of the capital stock tax already levied on July 1, 1921, but the language of § 1400 (b) seems to us to demand that result.

[fol. 175] As to the tax for the year before, the case is more troublesome. There is no difficulty, if that tax is payable in advance, because the income tax had not "taken effect" on July 1, 1920. If however it was payable for the preceding year, the tax due July 1, 1921, in part covered a period during which the income tax had already "taken effect"; it did not any longer "remain in force." Owing to the difference in the period of taxation, the inevitable alternative is between levying a double tax upon the plaintiff for the first six months of 1921, or allowing it to escape all such taxation for the previous half year. The answer

must depend upon whether taxes under § 1000 of the Act of 1918 were levied in advance or for the preceding year. They were construed in the former sense by the Treasury, (Reg. 50, Art. 1), and so had been the tax of 1916; which was almost literally the same. Such an interpretation, already made when the Act of 1918 was passed, is strong evidence of intent, (National Lead Co. v. U. S., 252 U. S. 140, 145, 146; Heiner v. Colonial Trust Co., 275 U. S. 232, 235). Moreover, these are "special taxes", long known to our fiscal system, and generally payable in advance, (§ 186, Title 26, U. S. Code). It is true, as the district court observed, that § 1000 (c) of 1916 provides that "the taxes imposed * * * shall not apply in any year to any corporation which was not engaged in business * * * during the preceding year"; and § 1000 (a) (1) computes them on "the fair average value" of the capital for the preceding year. Of course it is impossible to calculate [fol. 176] such a tax in the case of a company that had done no business during any part whatever of the preceding year. But § 1000 (c) does not say that the company must have been in business "during the whole of the preceding year", but only "during the preceding year." The same applies to the use as a basis of the "fair average value for the preceding year." It was entirely possible to compute the tax in the case of a company which had been in business for a part of the preceding year, and this satisfies all that the words demand. The Court of Claims, (Washington Water Power Co. v. U. S., 56 Ct. Claims 76), has decided in a case arising under the Act of 1916, that the tax is payable in advance, and this seems to us the proper construction. Finally, as we have said, the tax had its origin in the Revenue Act of 1916, which imposed it for the year beginning January 1, 1917. While it is possible that Congress meant to levy it for a period during which the act was not in effect, the language is "on and after January 1, 1917." It is more likely that such an excise in accordance with the usual theory, was laid prospectively upon an activity to be engaged in, than upon its pursuit during a time when there was no tax in view.

Judgment affirmed.

[fol. 177] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

Hon. Learned Hand, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

New York Life Insurance Company, Plaintiff-Appellant,

v.

Frank K. Bowers, as Collector, etc., Defendant-Appellant

Appeal from the District Court of the United States for the Southern District of New York.

Judgment Filed Mar. 10, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with interest.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 178-184] [File endorsement omitted.]

[fol. 185] Petition for rehearing covering 7 pages filed Mar. 20, 1930, omitted from this print.

It was denied, and nothing more by order April 7, 1930.

[fol. 186] UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Order Denying Petition for Rehearing—Filed Apr. 7, 1930

A petition for a rehearing having been filed herein by counsel for the defendant;

Upon consideration thereof it is Ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 187] [File endorsement omitted.]

[fol. 188-189] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 190] SUPREME COURT OF THE UNITED STATES

No. 93, October Term, 1930

NEW YORK LIFE INSURANCE COMPANY, Petitioner,

vs.

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York.

ORDER ALLOWING CERTIORARI—Filed June 2, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 191] SUPREME COURT OF THE UNITED STATES

No. 160, October Term, 1930

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York, Petitioner,

vs.

NEW YORK LIFE INSURANCE COMPANY

ORDER ALLOWING CERTIORARI—Filed June 2, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File Nos. 34,982, 35,080. U. S. Circuit Court of Appeals, Second Circuit, Term No. 930. New York Life Insurance Company, Petitioner, vs. Frank K. Bowers, Collector of Internal Revenue for the Second District of the State of New York. Filed April 26, 1930. Term No. 160. Frank K Bowers, Collector of Internal Revenue for the Second District of the State of New York, Petitioner, vs. New York Life Insurance Company. Petitions for writs of certiorari and exhibit thereto. Filed May 26, 1930, File Nos. 34,982, 35,080.

(5047)